

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 10th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(Contd.)

Article 260-(Contd.)

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): At the close of yesterday's sitting, Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable Honourable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear In mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces? The draft amendment as I have moved provide, that the President shall take into consideration the recommendation, of the Finance

Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, viz., supposing there was a clamour made by all the provinces, which is, perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces? If, on the other hand, there was a report of the Commission containing recommendations that the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands, now and the amendment proposed is that according to Pandit Kunzru, the President should be free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means.....

Pandit Hirday Nath Kunzru (United Provinces: General): Will the honourable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Centre and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

The Honorable Dr. B. R. Ambedkar : That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

Pandit Hirday Nath Kunzru : Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that subject. Let my Friend read the sub-clause to understand the meaning.

The Honorable Dr. B. R. Ambedkar : "any other matter referred to the Commission by the President in the interest of sound finance."

Pandit Hirday Nath Kunzru : That is (d). Will the honourable Member refer to article 260, the article which we are discussing, with particular reference to the clause that I dealt with yesterday? Sub-clause (a) of clause (3) of article 260 says-

"It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them....."

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted.

The Honourable Dr. B. R. Ambedkar : I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring, for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President : I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar. The question is

"That for clause (1) of article 260. the following clause be substituted:-

(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clause be substituted :-

'(a) the distribution between the Union and the States of the net-proceeds of taxes on income which are to be divided initially between them under this Chapter :

(aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;' "

The amendment was negated.

Mr. President : The question is:

"That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

That article 260, as amended, stand part of the Constitution.

The motion was adopted.

Article 260, as amended, was added to the Constitution.

Article 261

(Amendment No. 2949 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 261, for the word 'Parliament' the words 'each House of parliament' be substituted."

[Amendment No. 99 (List I, Third Week) was not moved.]

Shri H. V. Kamath (C.P. & Berar : General): Sir, I move:

"that with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'together with an explanatory memorandum as to the action taken thereon' the words 'together with such explanatory memorandum as he may think fit' be substituted."

I move also, Sir, by your leave the next amendment that stands in my name, namely amendment No. 139 of List IV, Third Week, to the effect:-

"That in amendment No. 2950 of the List of Amendments, for the words 'each House of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' be substituted."

This amendment No. 139 incorporates the amendment proposed by Dr. Ambedkar, amendment No. 2950 in our List of Amendments, so that if these two amendments of mine were accepted by the House, the article will read as follows :-

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with such explanatory memorandum as he may think fit to be laid before each House of Parliament for such action thereon as Parliament may deem necessary."

To my mind, Sir, this article 261 coming as it does after article 260 and relating as it does to an important Commission, namely the Finance Commission, presents an unfortunate anomaly. This article is one of those numerous articles in our Draft Constitution which seek to centralize more and more power in the President, that is to say, the Executive; the President, of course acting upon the advice of his Council of Ministers as we have been repeatedly told here. I see no reason why the action to be taken on the recommendations of the Finance Commission should be left to the judgment solely of the President said his Cabinet. In article 260 which has been already adopted by the House, we have clothed Parliament with certain powers regarding this Finance Commission, Clause (2) and (4) of article 260 vest in Parliament powers regarding the determination of qualifications for membership of the Commission and determination of the powers of the Commission. The Finance Commission as has been made clear by Dr. Ambedkar and also by Pandit Kunzru is going to be a very important piece of machinery of the State. We have clothed the

Finance Commission with vital powers. Though of course in law and in the Constitution, it is merely advisory and recommendatory, yet I have no doubt in my own mind that this Commission will play a vital part in the decisions that the President or his Cabinet or Parliament might arrive at so far as financial matters are concerned. Sub-clause (d) of clause (3) gives powers with respect to general matters, that is to say, matters relating to federal finance in general. Besides this, this Commission has been invested with advisory powers regarding allocation of revenues between the Centre and the units and also as between the various units of our Union. Considering all these various aspects of this vital matter, I feel that we shall be failing in our duty if we do not provide in the Constitution that the last word as to the action to be taken on the recommendations of the Finance Commission shall rest with parliament and not with the President.

I raised a similar point in connection with another Commission, the article regarding which has already been adopted by the House, namely article 301, the Commission to investigate the conditions of backward classes. I then raised the issue that Parliament and not the President or the Executive should be clothed with powers regarding the action to be taken on the recommendations of that Commission. My Friend, Prof. Shibban Lal Saksena, I am glad to find, has now got a similar amendment to mine. I hope, Sir, that this matter, important as it is, will receive the earnest and serious consideration of this House and that we shall see to it that where it is derogatory to the dignity of our Constitution and the sovereignty of our Parliament, the Executive is not clothed with these powers which are absolutely uncalled for. Parliament passes the law laying down the qualifications of the Commissioners; Parliament gives them certain powers; however, it has not the power to take action, but the President has been clothed with the power to take action on the recommendations of the Commission. Parliament will be presented, unfortunately, with a *fait accompli*.

Shri Brajeshwar Prasad (Bihar: General): For purposes of elucidation, Sir, I would like to know from Mr. Kamath whether the position and powers of Parliament under the Draft is that of a sovereign body or it has got only limited powers.

Shri H. V. Kamath : I am glad my honourable Friend Mr. Brajeshwar Prasad has thought fit to raise this question by way of an interruption. If he scans the article carefully, he will find that memorandum referred to in this article is a memorandum as to the action taken thereon. That is to say, it does not say "proposed to be taken thereon". The President will take action on the recommendation and then it will be laid before Parliament.

Shri Brajeshwar Prasad : You said that Parliament is a sovereign body; I say Parliament is not a sovereign body.

Shri H. V. Kamath : If Parliament is not going to be, sovereign, if my Friend wants to make the President sovereign in relation to Parliament, I have no quarrel with him.

Shri Brajeshwar Prasad : Read the Draft and say whether it is a sovereign Parliament or a limited Parliament.

Shri H. V. Kamath : I do not want to enter into any academic discussion. I am concerned only with the particular article before the House. The article deals with the powers of the President *vis-a-vis* Parliament as regards the Finance Commission's recommendations. If we turn to articles 275 and others, there at least we have got this provision that Parliament should approve of a certain action taken by the President; otherwise, that action ceases to have validity. Here, there

is no such provision at all. The President will submit a memorandum to Parliament describing the action taken on the recommendations of the Commission and it will be laid before Parliament. For what purpose, God alone knows. For what purpose this would be laid before Parliament, for approval, disapproval rejection or consideration, nothing is stated.

Pandit Thakur Das Bhargava (East Punjab: General): Merely for information.

Shri H. V. Kamath : Pandit Thakur Das Bhargava says, merely for information. If that is the intention of the article, it is a most pernicious measure. Parliament will be treated with scant regard and with, I may even say, contempt, if this article is passed as it is. We must certainly provide whether Parliament will have power to reject, or what powers will be given to it, with regard, to the action taken by the President on the recommendations of the Finance Commission. If Parliament is going to have no powers at all in this matter, not last word in this matter, I am constrained to say that we are clothing the President with more and more powers which are absolutely uncalled for, absolutely unnecessary in this respect. The Finance Commission being a very important body. I would once more plead, before I conclude, it must be subordinate to Parliament which is going to be a sovereign legislature. It is no use the President presenting Parliament with a *fait accompli* telling them "this is the action I have taken". I think this will be a very humiliating position for the sovereign Parliament and derogatory to its dignity. I hope Dr. Ambedkar and this wise team will look into the matter very closely and just as the other day, after a full dress debate upon article 280, we find a new amendment will shortly be moved by Dr. Ambedkar, seeking to give some authority to Parliament with regard to the suspension of fundamental rights, -that has been included in the agenda, -so also I hope Dr. Ambedkar, the Drafting Committee and the House look into the matter very closely and see to it that Parliament retains ultimate control over the action to be taken on the recommendations of the Finance Commission and not leave it to the sweet will and pleasure of the President and the executive. Sir, I move amendments 138 and 139, of List IV, Third Week, and commend them for the earnest consideration of the House.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move

"That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'action taken thereon to be laid before Parliament', the following words be substituted :-

'containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right, to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.' "

After the amendment is adopted, the article will read as follows:-

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum containing his proposals for action that should be taken thereon to be laid etc..... law."

As I said while discussing the last article, I feel that in this Chapter the Ultimate authority of Parliament in regard to financial matters has been made secondary to the authority of the President. I regard this to be against the principles of

democracy. Here we are appointing a Finance Commission which shall be charged with powers to make recommendations for allotments between the Union and the various States, for making grants-in-aid to various States, for even modifying terms of any agreement entered into by the Union, and in respect to any other matter which may be referred to it by the President. Such are the wide powers which have been given to this Commission. Now this Commission will make a report after touring the country, after investigating the entire financial position and will submit its report to the President. I want to know whether the Parliament is the final authority to accept or reject any of the recommendations made by the Commission or the President is the final authority. I feel that it is a matter of deep consequence and cuts at the root of democracy if Parliament does not have the final say on this important question. I have therefore in this amendment suggested that after the report of the Commission is received the President shall lay a memorandum containing his advice to the legislature as to how far these recommendations should be accepted but the ultimate authority for accepting those proposals or rejecting them must be vested in the House of People. Mr. Kamath said that both the Houses of Parliament should vote upon such a Bill. Any Bill containing recommendations of the Finance Commission will be a financial Bill which can only be subject to the vote of the House of the People and not to the vote of the Upper House. Therefore I have here omitted the Upper House. I have said that the House of the People shall have the right to amend the proposals made by the President by a Resolution passed by the House of the people. It is the House of the People that will determine whether the recommendations made by the Finance Commission on the proposals made by the President should be amended in some form or not. Normally when there is Parliamentary Democracy the Prime Minister will have a majority in the House of the People, and therefore whatever proposals the President will submit will surely be on the advice of the Prime Minister and therefore they will have the support of the majority of the House. There should therefore be no difficulty in getting them through, but the discussion in the Parliament will give the Opposition an opportunity to examine the proposals, to suggest amendments, to bring to the notice of Government another point of view which probably the Government may accept. If we deny the Opposition the right to bring forward amendments or criticise, the proposals, I do not think we are carrying on the form of democracy which we have accepted. I do not see how Dr. Ambedkar can get this article passed as it is. He is trying to give the power to the President, all along, of course with two or three exceptions which make him all the more inconsistent. I have said that the authority of Parliament should be supreme in financial matters because on the proper control of finances depends the prosperity of the country. I therefore think that my amendment is a simple one and I hope the House will accept it.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, I regret to say that both my Friends Mr. Kamath and Professor Saksena are labouring under certain misconceptions. The first thing about this article 261 is that it does not give any additional power to President. There is no clause in this which seeks to give any additional power to President than what has already been decided by this House and is embodied in articles 254 and 255. Prof. Saksena was not also correct when he said that the Finance Commission has wide powers. Its powers are defined in 260 clause (3) and as would be quite clear, the powers are merely to make recommendations to the President. They have no final power to take any action whatsoever unless they act under clause (4), but those powers can be only those that are delegated to them by Parliament. Since it is only recommendations that they are competent to make, I do not think it is correct to say that the Finance Commission has wide powers. Nor can this article be, aid to enlarge the powers of President in any way. Whatever damage was to be done to the authority of the Parliament as the supreme body has already been done by articles 254 and 255 and no amendment whatever to 261 can rectify that position. I would however like

to point out that it would have been better had the words 'by him' would have been added after the words 'thereon' so as to make it clear that the Parliament will have placed before it the President's action on the recommendations that have been made by the Commission and the recommendations themselves. Otherwise the article is quite satisfactory because when these papers are laid before Parliament, the Parliament would be competent to pass on it such resolutions or turn down any recommendations or to set aside any action taken so long as it has powers to do so. Those powers that have been expressly taken away from it by articles 254 and 255 cannot be exercised by Parliament even if we accept the amendments proposed by Prof. Saksena and Mr. Kamath. The Parliament will be incompetent to interfere with them. But the rest of the powers which it enjoys, as long, as they have not been specified as taken away from Parliament, it cannot be said to be not able to exercise. So I think the amendments suggested are not at all necessary, but the wording of the article as it stand is not as satisfactory as I would wish. It should have been made clear that excepting these cases governed by 254 the Parliament would be competent to take such action as it pleased on the recommendations of the Commission which are not specifically excluded from its purview. Otherwise I do not think there is likely to be any difficulty in retaining this clause as it stands.

The recommendations as well as the action of the President, I believe, are intended to be placed before Parliament and even after debate such distribution of finances which is within the discretion of the President and such charges on the consolidated funds of India which have been provided for under article 255, Parliament will not be in a position to interfere. So I think there is not much point in saying that Parliament will exercise those powers which are already there and which are not taken away. I therefore do agree that there is any need to amend this article.

Pandit Thakur Das Bhargava : Sir, I support the principle of the amendment of Mr. Kamath and the amendment of Mr. Saksena, in regard to article 261, it is said the explanatory memorandum shall be, laid before Parliament and if you kindly pursue the wording of the article, you will see that the explanatory memorandum does not contain the proposal of the Finance Commission, but it refers to the action taken thereon. Action taken thereon can only mean that the President shall be the final judge of those proposals and he alone has, the discretion to accept or reject any of the recommendations made by the Finance Commission. This is very unsatisfactory. As a matter of fact, article 261 is the hope of all the provinces. At present, when we refer to article 255, as we discussed it yesterday, the need of the poor provinces will be looked into by Parliament, and in regard to article 254, it is a transitory provision. All these matters will be placed before the Finance Commission which will be appointed within two years, in the first instance, and subsequently after every five years. The proposals which the Finance Commission will make will be not of the nature of day to day affairs, but considered proposals regarding the fate of the provinces. All the progress in the provinces will depend upon the recommendations of the Finance Commission. The provinces do hope that the Finance Commission will be above board and will take their needs into consideration, so much so that we have intended under 262 (2) that Parliament shall determine the qualifications of those five members too. Therefore, my submission is that the report of the Finance Commission shall be a historic record and shall furnish the basis for those proposals which will affect the provinces vitally. The provinces, therefore, should have the say in the matter, through their representatives in Parliament. If the Cabinet or the President be the sole judges of such recommendations as the Finance Commission will make, I do not think it will inspire the confidence of the provinces. It is therefore, necessary that a matter of this importance, the Finance Commission which will come into being and which will make enquiries after every five or six years-because one year may be taken by the

Commission to report-that a matter of this importance be placed before Parliament and Parliament should have the last word on it.

In regard to Parliament, I understand that. the principle contained in the amendment of Professor Saksena is a very salutary one. According to the other provisions of this Constitution, it is the House of the People which has got the final voice in all matters relating to finance, and it is but meet that both Houses of Parliament be able to discuss the proposals of the Finance Commission, but the House of the People should have the final say in regard to financial matters. Therefore it is necessary that the proposals are laid before the House of Parliament and then discussed and any proposals that emerge out of these discussions should ultimately be recommended by the House of the People, and the law emerging there from should have the effect of Money Bills. All provisions that we have so far enacted in regard to Money Bill should apply to these also.

I am not impressed by the arguments of Dr. Deshmukh who thinks that in article 261 no power has been taken away from Parliament. My humble opinion is that in regard to 261, if the President has the power to take action, then the only purpose of the memorandum will give information to the Members. It is clear that the powers of Parliament as such are taken away. My Friend is of the view that after the action has been taken, then after it is placed before Parliament, the House will then be in a position to take action. This evidently cannot be correct. Even if it is correct, I think if the proposals are not in the first instance put before the House of the People, then a great deal of harm will be done. It will be difficult to reject or do away with the, recommendations already made. it is but fair that the report of the Finance Commission and the entire matter should be within the purview of the House of the People to debate upon and take action. My own apprehension is that after action has been taken by the President, this memorandum will only be placed for information and not for the purpose of taking action. I feel that this provision takes away the inherent power of Parliament to deal with financial matters, and therefore, I would like that the amendments of Mr. Kamath and Professor Saksena be accepted.

Prof K. T. Shah (Bihar: General): Mr. President, Sir, I also support the amendments moved by Messrs. Kamath and Saksena. I confess I am not very happy over this entire chapter relating to the appointment, powers, and activities of the Finance Commission. The Finance Commission is so much more additional patronage in the hands of the executive, and will act, in so far as it is empowered under this article to act, against the inherent rights of a sovereign Parliament. It is impossible to agree that by this provision no power that normally vests in a sovereign Parliament is taken away, because, even according to article 261, the right to consider the memorandum, or the right to submit the memorandum to Parliament, will result only in a kind of postmortem examination of the action taken, which, if I may say so, will encourage only fruitless discussion, where the opposition may for opposition's sake, only find fault and where constructive suggestions would not be in order, because it will be only a debate on action actually taken, which cannot be remedied and which, therefore, can give occasion only to venting, as it were some past spite.

I do not think a provision of this kind will help either the requirements of economy, or, what is still more important, the requirements of popular sovereignty, as embodied in the Power of the Purse, as it is called, under the model we are copying--I mean the British Constitution. If, as these amendments propose, there is some chance given to Parliament to say the last word on the action to be taken, then there may be some hope that the rights of Parliament over matters financial will be kept intact. But if Parliament is only to review the action taken, and indicate

its general dissatisfaction with the action taken, I do not think that it would be at all worthwhile making even such a submission. The Commissioners are presumably experts, well versed in their lines. It may, therefore, well be presumed that the recommendations they make are based on very strong considerations, and will not be lightly disregarded by the President or any other power. To that extent, therefore, the Commissioners may be said to be taking away the powers of Parliament. It is only to make it quite clear, as these amendments try to do, that the last word will rest with Parliament that I support these amendments. The sovereignty of the House of the People in matters financial ought to be left in no doubt. I therefore support these amendments.

Mr. President : May I just say one word ? I did not like to mention it, but I think I should. I find there are too many conferences going on inside the House with the result that even those Members who are desirous of listening to the speeches find it difficult to follow them. There is a tendency I find to gravitate, against the law of gravity, from the benches in the front to benches in the back, and I find that benches on the back afford opportunities of discussion which probably has nothing to do with the discussion that is going on in the House. I would therefore suggest to the Members that if any other question has to be discussed than that which is being actually discussed in the House, that might be discussed elsewhere.

Shri Mahavir Tyagi (United Provinces: General): Sir, will you also kindly ask the speakers to bring their points in such a way as to attract attention ?

Mr. President : That is beyond me.

Shri Biswanath Das (Orissa: General): Sir, I stand to record my protest at the aspersions made by so scholarly a gentleman as Professor Shah. He finds unfortunately ghosts where there are none. He has made reference to Patronage. I would request him to show anything in the article wherein comes patronage. The appointment of a Finance Commission is a necessity. It is not peculiar to India. It is a necessity and has been accepted and adopted in India to suit the peculiar conditions of a federal structure that has been devised for her on the lines of similar other States. All that the Constitution has done is to lay down specific powers for Parliament to make laws by which a Finance Commission is to be appointed. And it has gone a little further. It has laid down also the conditions and qualifications of persons to be appointed. May I refer you to article 260(2) in this connection, which lays down that "Parliament by law shall determine the qualifications etc. of the Finance Commission". I would request Professor Shah not to proceed with unjustifiable suspicion. If by the appointment of any Member of any Commission you mean patronage will come in, certainly you have to stop all State activities. That will be something like burning a house in a fight against flies. I hope therefore that Professor Shah will not play the role of an unnecessary opposition in a case where there is no scope for opposition.

Having stated so much about the unnecessary allegation made by our learned Professor, let me come to the vital issue that faces us in the discussion. I am sorry I have to differ from my esteemed colleagues Professor Saksena and Mr. Kamath. Both of them, I am sure, have erred grievously. They feel that powers of the Parliament are interfered with and that no discussion of a full and frank nature is possible under the circumstances. These two allegations seem to be the basis of their opposition.

Let me take the first, namely, that there will be no possibility of discussion. Parliament is to enact a law by which a Finance Commission is to be appointed. The

impartiality of the Finance Commission is a matter beyond doubt, because the whole thing is left to Parliament itself. They have to devise the law, they have to lay down qualifications, and the choice of the personnel depends upon the Cabinet, I believe, in the name of the Governor-General. They represent the people. Under these circumstances I have no hesitation in believing that there will be an impartial Tribunal. The Finance Commission is thus a baby of the Parliament-it is an institution created by the Parliament under its own statute.

On appointment, the Commission makes a thorough, deep and searching enquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon the Cabinet in the name of the Governor-General take decisions and they practically accept the recommendations of the Finance Commission, just as in the case of the findings of the Election Tribunal where the Governor or the Governor-General has the power to interfere. But can you point out a case wherein a Governor or Governor-General has ever interfered ? No, never. Therefore, precedents have been created and have been in existence wherein the recommendations of statutory bodies-judicial or quasi-judicial bodies-are accepted *in toto*.

Then the other stage comes in, namely, of their being placed before both Houses of Parliament. That again gives an occasion for discussion. Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore there is scope for discussion immediately after the sitting of Parliament.

The grant again comes before Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet which is absolutely representative of the wishes, aims and aspirations of this honourable House.

One question more remains for me to discuss here and that is about the charged items. Charged items in our country are many. They have become a part of the Constitution. Charged items are inevitable and charged items are the creations of the Legislative Assemblies themselves, because they pass legislation and they agree to charge their own items of revenue and expenditure as a charged amount in their budget. Therefore it is one of their own creation. It is only a question whether you should have a prior sanction or a post-sanction. That is all the difference. Therefore in this regard I do not agree with my honourable Friends that any injustice or wrong, serious, great or constitutional, has been done in this regard. Sir, it will not be conducive to the advantage of the nation if a fraternal duel is undertaken in this House by politicians from provinces and States. Each member is anxious to see that his provinces gets more. True it is that when a member is elected, he represents, after the election, India and not his province. That is true, but the fact remains that we are men and we are average men, not rising so high as few people have done, like our leaders Sardar Patel or Pandit Jawarharlal Nehru. So within these limitations, I claim that a decision, after a judicial and thorough enquiry of a non-Political Body, of the nature required to be undertaken by the Finance Commission in regard to the aids to be given to provinces, is necessary. The power is also vested under the statute in the Governor-General to revise these grants whenever he likes after a certain period of years. With these words, I strongly support the article and oppose the amendment.

Shri B. N. Munavalli (Bombay States): Mr. President, Sir, article 261 as it stands now empowers, as I understand, the President to place the recommendations of the Finance Commission together with the action taken thereon before the Parliament. This clearly shows that the Parliament will not be in a position to discuss the various recommendations that are going to be approved by the Executive and upon which action has already been taken. The amendments moved by my Friends Messrs. Kamath and Shibban Lal Saksena, as I understand them, require that the Finance Commission's recommendations should be placed before the House of Parliament before any action is taken, so that the House of Parliament may approve or disapprove or reject some of the recommendations made by the Finance Commission. Some of my Friends, for example, my honourable Friend Dr. P.S. Deshmukh, said that this article does not clothe the President with any more powers. That is true, but the Parliament will lose the opportunity of discussing and approving the recommendations if they were placed by the President after action has been taken by the executive. The whole difference between the article as it is and the amendments now put forth is that the power of discussion of the Parliament over the recommendations, before any action is taken, should not be removed. If the recommendations together with the action taken thereon by the executive are placed, the Parliament will be only in a position to approve and not to disapprove. Under these circumstances, I think that if these amendments are not accepted, the House of Parliament will lose much of its power. I therefore support the amendments and I commend that they be accepted by the House.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, neither the amendment of Mr. Kamath nor that of Mr. Shibban Lal Saksena for substitution is good. I am requesting them to consider how substitution is not proper. These may be in addition to the power given under article 261. It is admitted, and there is no dispute regarding the fact, that the Finance Commission's recommendations are only recommendatory and not obligatory. Some person, whether the President or the Parliament, should take action on them. With respect to certain matters, the President can take action. Under article 251 which we have already passed, so far as income-tax is concerned, it is collected by the Centre. A percentage of the income-tax is divisible among the provinces or States. The allocation is also to be recommended by the Finance Commission. Now, until the Finance Commission goes into the matter as to what percentage ought to be shared and how that income-tax is to be distributed among the States according to their needs, the President has the exclusive power to prescribe the percentage. The Parliament does not interfere as far as income-tax is concerned. "Prescribed" means until the Finance Commission has been constituted, "prescribed by the President by order", and after the Finance Commission has been constituted, "prescribed by the President by order after considering the recommendations of the Finance Commission. Nowhere in this article does the Parliament come in. Before the appointment of a Finance Commission, the President by order can direct that such and such a percentage of the income-tax has to be distributed among the provinces and States and in what percentage. After the Commission is appointed, the President may, after looking into the Commission's recommendations, take action. He may change the allocation and the percentage. As article 261 now stands, he has to report to the Parliament what action he has taken regarding those recommendations where action has already been taken. Therefore, there is no good deleting that portion relating to the action. Therefore, instead of substitution, I would suggest the addition of the following words in article 261:

"With an explanatory memorandum of the action taken or to be taken thereon to be laid before the Parliament."

I will give my reasons as to why there cannot be substitution but addition. The principle of the amendments suggested has also to be accepted, because it is not in every case that the President takes action. There are certain matters where it is the Parliament that has to take action. Take excise duties in article 253. Under article 253, excise duties in the first instance have to be levied and collected by the Centre. The portion of the excise duties that may be distributed among the provinces and the principles have to be laid down by Parliament. Now, with respect to those excise duties also, whatever duties are collected by the Centre which can be shared by the States, with respect to them also the Finance Commission has jurisdiction to recommend the allocation under article 261. Article 260 clause (3), sub-clause (a) relates to distribution between the Union and the States of the net proceeds of taxes which may be levied. Taxes are general. Taxes include not only income-tax, but also other taxes collected by the Centre, as for instance, the excise. But unlike income-tax which can be distributed by the President himself by order, excise duties have to be distributed by law made by Parliament. Parliament will do so, make allocations, after looking into the recommendations of the Finance Commission. Therefore, there are two aspects—one, the action taken by President, the other, the action taken by Parliament. Therefore, if article 261, as it stands at present, refers only to action taken by the President, it does not include action to be taken by Parliament. Under these circumstances, my respectful suggestion is, that instead of these amendments as they stand, these principles may be incorporated, and to effectuate this. I would suggest after the words "action taken" the words "and to be taken" may be included.

Sir, I have not tabled an amendment. After these amendments have come in and after this discussion, I find these amendments ought not to be in substitution, but in addition. I find that there is a lacuna and if you have no objection, and if honourable Friend the Chairman of the Committee also agrees, I can move an amendment in the following terms :

"As to the action taken or to be taken thereon to be laid before Parliament."

I shall move this amendment if it is acceptable to the House and the Drafting Committee.

Mr. President : I am not taking that amendment at this stage, unless the Drafting Committee is prepared to accept it.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I do not want to appear to be very wise, but I do feel that there has been considerable misapprehension in this House in regard to the scope of the work of the Finance Commission and I feel that the discussion that has taken place both on article 260, which the House has passed, and on this article arises out of that misapprehension.

I would ask the Members of this House to consider the origin of the scheme envisaged by this particular clause. There is an expedient that is being followed in Australia for the purpose of distribution of amounts set apart by the Centre either statutorily or otherwise to the States. The machinery in Australia, called the Australian Grants Commission, is the result of an Act passed by the Australian Federal Parliament in 1933. It is only a piece of administrative machinery similar to the *ad hoc* machinery that has been devised by the Government of India on various occasions, namely, Conference of Premiers of various States, Conference of Finance Ministers, Conference of Finance Secretaries, and so on. The creation of a body of this nature though it is put in the Constitution as an assurance to the States that an impartial machinery will be created for the purpose of distribution of grants, has no more sanctity about it than it would have under a Parliamentary Act. I would

also ask the Members of this House to realise this particular fact. Parliament undoubtedly can make legislation in regard to what portion of the Central finances, subject to the provisions contained in this chapter, could be distributed to the provinces. My honourable Friend Mr. Shibban Lal Saksena twitted the Drafting Committee yesterday that, while they have given the President powers to determine the allocation in certain articles, in one article they failed to do so and, therefore, he suggested acceptance of the amendment moved by my honourable Friend Mr. Nichols Roy to that end. The explanation is that it would not be proper that a mere matter of administrative detail should be discussed at length by Parliament and decided on.

The idea of the Finance Commission is a very restrictive one. If the idea of the Finance Commission is something like what I had at one time envisaged and tabled amendment which I did not move, namely, that in the first instance it ought to be a sort of Tax Investigating Commission, then I quite agree to all the propositions contained in the amendment moved by my honourable Friend Mr. Saksena. If it is going to be a matter in which the Finance Commission is going to be entrusted with reviewing the tax structure of this country and proposing amendments thereon, certainly Parliament must consider the report and Parliament must decide what steps the Central Government should take to implement its recommendations and how it can be incorporated either in the Constitution, or by means of a statute which will be applicable to the Central Government and also to the States. But that is not the position before us today. The position envisaged is a very limited one. In order to assure the States that they will have a fair deal the Drafting Committee has put in the body of the Constitution a provision which is not so wholly necessary to be put in the Constitution for the purpose of execution of that idea, namely, the creation of a Finance Commission. That is a limited objective. That objective I think the House will forgive my repeating it would be equally well-served by a Parliamentary Act. This article therefore has no more sanction than a Parliamentary act will have. That being so, Parliament must leave it to the executive to undertake the very onerous duty of distributing between the various provinces, on certain principles to be laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. I want the House to refer to article 253, clause (2), which says that Parliament will determine whether the whole or part of the duty will be distributed to the States, the principles on which they should be distributed, the actual quantum, etc. The application of the principle of distribution is not a matter for Parliament; it is a matter for the executive. If the executive misbehaves in any manner, it is then the obvious duty of Parliament to call the executive to order. But the House will have to recognise that while the Australian Grants Commission is a piece of administrative machinery, our Finance Commission will also only be an aid to the administrative machinery even though created by an article in the Constitution and their recommendations must be decided on by the executive, in consultation with the various Ministers of the States. Naturally the Commission is to be a permanent body or a semipermanent body. But if Parliament is going to take upon itself the duty of adjudicating the claims of the various provinces, then instead of having a Finance Commission we may well have a sort of conference of the finance and other ministers of the States which will report to Parliament and Parliament can discuss the report and take necessary action thereon. But what will be the result ? I will ask the House to remember what happened here yesterday and the day before when individual claims of provinces, absolutely without any reference to the claims of other provinces were pressed and pressed hard for any length of time. Individual members spoke for about 75 minutes on the subject. And to what purpose ? The speeches had no relation to the total amount of revenue that is likely to be distributable or to the claims of provinces other than their own. It is in order to prevent Members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular provinces that we have proposed to leave the thing in the hands of an administrative machinery,

an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

I think my honourable Friend Mr. Saksena, himself a very diligent student of public finance, will realise that he is really throwing an apple of discord into the midst of members of Parliament when he wants Parliament to undertake this onerous responsibility. The father we remove this responsibility from Parliament and entrust it to an independent body like the Finance Commission, the better it will be for the future of this country. I think the point that has been made by members who spoke in support of the amendment is without any substantial merit.

In regard to the particular amendment suggested by Shri M. Ananthasayanam Ayyangar, I do see that it has a point. But the words here "as to the action taken thereon to be laid before Parliament" also mean that if anything is left over, a discussion may be raised in Parliament and what has been done or has not done will all be explained by those who are in charge of the finances of the country. Such a discussion will probably be useful for the purpose of future guidance rather than for determining what was to be done at the moment. I therefore think that the House will do well to reject the amendment, not because it is pointless, but because it arises from a total lack of understanding of the very limited field envisaged by articles 260 and 261.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the article moved by Dr. Ambedkar. I differ those who oppose this article on the ground that it is not in consonance with the sovereignty of Parliament. It is only in unitary States like England that Parliament is a sovereign body. There is no legal sovereign in a federal constitution. Political sovereignty rests with the people. We have distributed powers between the Centre and the provinces. Even in those spheres that have been left to the Union Government, powers have been divided between three organs of the State, the Judiciary in the form of the Supreme Court, the Parliament and the President. Sometime last year I had occasion to raise the question at a different place that the President under the Constitution has got absolute powers and that his powers are not circumscribed by ministerial advice. Sir, having due regard to the fact that there is no legal sovereign in our Constitution, all talk of sovereignty of this House is entirely misplaced.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here to protest very strongly against the two amendments which have been moved by my Friends Mr. Kamath and Mr. Saksena. I submit, Sir, that the amended article 260 is being hailed by people who suffer under a sense of injustice being done to them in the past and who hail this amended article 260 because it has reduced the period from five years to two years and also in the subsequent stages to a period shorter than five years. Sir, it follows therefore that if you have really a desire to do justice to the more unfortunate provinces, you should do so as early as possible and as quickly as possible. Therefore the provision in article 260 which enables the President to deal with the recommendations made by the Finance Commission is a very welcome one. If you leave it to be decided by Parliament it will necessarily mean that both Houses of Parliament would have to consider it. If the amendment which has been put forward by Mr. Saksena is accepted, then it will be enough if the Lower House puts its seal to it; but then it would mean delay and it would mean also that if the matter entirely rests on the vote of the House of Parliament, then the question of each province fighting for its own share or more than its own share will arise, and those provinces that have a more potent voice will get more than they deserve in some and will deprive other provinces which deserve more. Therefore, both on the ground of quick meting out of justice and also on the ground of having better justice. I think it is certainly very

welcome that a decision will be made by the President as early as possible and communicate the same to the Legislature. I do not mind if the decision is accompanied, as my Friend Mr. Kamath desires, by an explanatory note or not. But, since it is the desire of Mr. Kamath that an explanatory note may be given so that he may find scope for criticism, that note may be furnished. That will not harm us in any way. But what I would like to say on behalf of the poorer provinces that are labouring under a sense of injustice so far as finances are concerned—that injustice was not done by the present regime, but by the previous one - is that we all welcome article 261 remaining as it is.

Shrimati G. Durgabai (Madras: General): I move that the question be now put.

Shri Jagat Narain Lal (Bihar: General): Sir, the question before us is not entirely free from difficulty. It is true that the Finance Commission is an expert body consisting of a few select experts to judge as to what should be assigned to the different provinces. If the Parliament is to be made a cock-pit by the different provinces combining to get things done as they like, it will be very difficult for the Central Government. On the other hand the difficulty of the poorer provinces is there. The Finance Commission will be a small body. In case the Finance Commission does not see its way to do justice to some of the provinces which cannot carry on without a proper allocation, the position will be difficult indeed. I would have liked to support the amendment which makes the decision appealable from the decision of the Finance Commission in certain cases. The article as it stands does not make the decision appealable. If, however, some provision could be made whereby the recommendations of the Finance Commission could be reviewed in special cases by somebody, by the Cabinet or the Parliament, I would like to welcome such an amendment or such a provision. These are the difficulties and I would, instead of supporting the amendment which says that the Lower House should sit in judgment in every case, urge that some provision may be made whereby the recommendations of the Finance Commission in special cases, if any province wants it, may be reviewed by somebody who might sit in judgment on them. These are the few suggestions that I wanted to make.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry I cannot accept the amendments moved - to this article. It seems to me that the amendments are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leaves the matter entirely with the President acting on the recommendation of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My submission is that that issue is now closed we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

Now, the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made by Parliament. The President cannot do it himself. Therefore the words "shall put before Parliament a memorandum stating the action that has been taken" merely means this that the President shall say, as he is bound to say, that a Bill shall be

introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my friend, Prof. Shibban Lal Saksena, will read article 261 in relation to the other articles that we have passed, he will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment. Therefore I think that his amendment is quite unnecessary.

Mr. President : I will now put the amendments to the vote.

The question is :

"That with reference to amendment No. 2950 of the List of Amendments, in article 261. for the words 'together with an explanatory memorandum as to the action taken thereon', the words 'together with such explanatory memorandum as he may think fit' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2950 of the List of Amendments. for the words 'each House of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'action taken thereon to be laid before Parliament' the following words be substituted:-

'containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right to amend the proposals made by the President by a resolution passed by the House of the People., The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.' "

The amendment was negatived.

Mr. President : The question is:

"That in article 261, for the word 'Parliament' the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 261, as amended, stand part of the Constitution."

The motion was adopted.

Article 261, as amended, was added to the Constitution.

Article 262

Mr. President : Amendment No. 141 is verbal. I take it that we should not have these formal amendments moved in every case.

Shri H. V. Kamth : This amendment relates to amendment No. 2951. If that amendment is not moved, this will not arise.

Mr. President : I am suggesting that verbal amendments like the substitution of "Consolidated Fund of India" for "the revenues of India" should be left to the Drafting Committee. Whenever such phrases occur, the Drafting Committee will put them a right.

Shri H. V. Kamath : Amendment No. 2951 seeks the substitution of the words "the revenues of India" by the words "Indian revenues". If that amendment is not moved, my amendment will not arise.

Mr. President : That was given notice of, before we accepted the term "Consolidated Fund of India".

Does anyone wish to say anything on this article?

The question is :

"That article 262 stand part of the Constitution."

The motion was adopted.

Article 262 was added to the Constitution.

Article 263

Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 263 the following be substituted :-

Custody of Consolidated Funds, the payment of moneys in to and withdrawal of moneys from such funds.

` 263 The (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys there from and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall

be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.' "

I do not think any explanation is necessary.

Pandit Hirday Nath Kunzru : Mr. President, I move:

"That in the amendment just moved by Dr. Ambedkar, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted; and for the words 'such Fund', wherever they occur, the words 'such Funds' be constituted."

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

Mr. President : I take it that Dr. Ambedkar will accept Pandit Kunzru's amendment.

The Honourable Dr. B. R. Ambedkar : I accept the amendment.

Mr. President : The question is :

"That in amendment No. 206 above in the proposed article 263, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted; and for the words 'such Fund', wherever they occur, the words, 'such Funds' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That proposed article 263, as amended, stand part of the Constitution."

The motion was adopted.

Article 263, as amended, was added to the Constitution.

Article 263-A

Mr. President : There is an additional article to be moved by Dr. Ambedkar.

Shri T. T. Krishnamachari : May I suggest that it should be held over?

Mr. President : Very well. Then we go to article 267. Articles 246, 265 and 266 are not on to-day's list.

Article 267

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 267-

(i) after the words 'Crown in India' the words 'or after such commencement in connection With the affairs of the Union or of a State' be inserted;

(ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;

(iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted;

(iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and

(v) for the words 'revenues of the State, the words 'Consolidated Fund of the State' be substituted."

It is just consequential.

Prof. Sibban Lal Saksena : Sir, I beg to move:

"That for part (i) of amendment No. 102 above, the following be substituted:-

'(i) for the words "Crown in India", the words "Government of India prior to 15th August 1947 or after such commencement in connection with the affairs of the Union or the Government of a State" be substituted;'

Sir, I have suggested this amendment, because I do not want the words "Crown in India" to appear in our Constitution and to be a reminder of the period of our slavery for ever in future. I do not think that the word is so essential and it can be very easily avoided by converting it into "Government of India prior to 15th August 1947". I think this is a very simple amendment and the sentiment of the House, I am sure, will be in favour of it. The other portion of the amendment is merely the incorporation of Dr. Ambedkar's amendment and that I think will be acceptable to him. I therefore think that these words "Crown in India" should be changed into "Government of India prior to 15th August 1947".

Shri H. V. Kamath : Mr. President, I move, Sir, amendments 142, 143, 144, and 145 of List IV, Third week. Amendment No. 142 runs thus :

"That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'in connection with the affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted."

The next amendment, 143, reads as follows:-

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

Amendment No. 144 reads to the following effect :-

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another such State' be substituted."

The last amendment, Sir, of mine, No. 145 of the same List, is to the following effect :-

"That with reference to amendment No. 102, of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

All these amendments are germane to the amendment just now moved by Dr. Ambedkar before the House, number 102 of list I (Third Week). These four amendment of mine fall into two categories. The first three are similar in nature and the last one is in another class. The first three seek to substitute certain expressions used in this article and thereby eliminate what I consider unnecessary and cumbrous verbiage. I do not know exactly whether in using expression "affairs of the Union or of a State", the Drafting Committee has got something else in mind than service rendered by a person under the Government of the Union or of a State. The article refers to pensions payable to or in respect of a person who has served in connection with the affairs of the Union or of a State. Naturally, if a person is entitled to some pension in connection with services rendered by him, I believe it must be under the aegis of the Government of the Union or of a State which is liable to pay the pension to him. Therefore, I feel that it is somewhat vague to use this expression "affairs of the Union". What kind of affairs? The Union or a State may have all kinds of affairs. I suppose the article contemplates governmental affairs, and not any other affairs that may arise in connection with the Union or as between the Union and the constituent units. Therefore, this article must be clear; that is to say, it must specify, clarify and make it absolutely crystal clear that the services rendered by a person on account of which he will get a pension will be in relation to the Government of the Union or under the Government of a particular State.

If, of course, this expression in the proposed draft means the very same thing, then mine will be a formal or verbal amendment; by plea will be, that it is far less cumbrous, and far more clear. English is a notoriously cumbrous language. Some of us tend to make it more so. I am reminded of one of Bernard Shaw's witticisms. Bernard Shaw once said that the English language is a very cumbrous instrument of expression and when we want to say, we cannot do a particular thing, we go on elaborating and say, "I am very sorry, I regret very much I cannot do this." The Chairman says, "no can", And expresses himself as clearly and effectively. I do not want the Drafting Committee or this House to be, like the Chinaman, so brief, terse or concise as to sacrifice the meaning of the article. Therefore, the first point that I want to make out is that this expression 'in connection with the affairs of the Union' must be clarified so as to mean, and to say what it means, that the services rendered by a person under the Government of the Union and the Government of

the State and no other affairs of any kind are contemplated 142, 143 and 144 that under this article. That disposes of, three I have just now moved before the House.

Coming to amendment No. 145, which seeks to substitute a tribunal for an arbitrator, I must at the very outset confess my partial if not total ignorance of civil law and ancillary legislation. Whether in constitutional law or in civil law there is an essential distinction between an arbitrator and a tribunal, I am not competent to have the last word on. But, from the meagre tit bits that I have gathered during my experience in several fields, I feel that a tribunal has got a greater constitutional importance or sanctity than an ad hoc arbitrator that may be appointed for a particular case. According to this article, if adopted as moved before the House by Dr. Ambedkar, it is conceivable that it is very likely that several cases may arise where under the visions of this article there may not be agreement between the parties concerned. There may not be just one or two cases; it is very probable that we may be inundated with scores if not hundreds of cases, because not merely the Union is involved, but various other States are also involved. Do we, by adopting this article, contemplate the appointment of an ad hoc arbitrator whenever a case arises ? That will mean that we will have several arbitrators appointed on several occasions. Or is it, our intention that to dispose of all cases of, this type, where agreement is not secured, to have a body of men, competent men, experts in their own line, to examine and decide all these cases and when they may arise ? If that be our intention, then in my humble judgment, not an arbitrator, but a tribunal is called for. The wording of this article also, I believe is not quite happy. It is said here that there will be an arbitrator..... that means to say one; I am sure we do not want to quarrel on the point that 'an' means one; I am happy that the Chief Justice of India has been empowered in this regard. But to say that he will appoint 'an arbitrator' and no more or no less I am sorry, no less cannot arise because less than one is zero--no more than one, is to fetter the judgment of the Chief Justice unduly. He may think that a particular case before him is either so complicated or the cases are so numerous or so varied that one, man cannot dispose of all these cases, and he might think that a tribunal will be more competent to decide these cases than arbitrator. I believe, so far as an arbitrator is concerned, both the parties have to signify beforehand their agreement to abide by the decision of the arbitrator. But if a tribunal is appointed and if we provide in the Constitution that the decisions of the tribunal will not be subject to any appeal and they will be final, we will be following a far wiser course than approving of this provision for a mere arbitrator. When this Constitution comes into force and this article comes into effect several cases of this type may arise and one arbitrator will not then be able to dispose of the cases with promptitude and alacrity and I make bold to say, with sufficient impartiality and justice. A tribunal or a high order is called for to dispose of these matters and so I move that instead of 'arbitrator' proposed in this article the Chief Justice of India should be vested with powers to appoint a full-fledged tribunal to dispose of these cases as and when they arise. I therefore move Nos. 142, 143, 144 and 145 and commend them for the consideration of the House.

Dr. P. S. Deshmukh : Mr. President, this a very simple article and I do not think the House need take long to pass it. It refers only to adjustments in respect of certain expenses and pensions. Mr. Kamath has moved an amendment to substitute 'arbitrator' by 'tribunal'. I would suggest to him that it is wholly unnecessary to transform a mere arbitrator into a tribunal with all the expenditure that it will involve. These are likely to be small cases and one person appointed by the Chief Justice to give an award so as to 'adjust the expenditure between the Union and the States would be quite enough. They are not likely to be very complicated cases nor is there like to be great feeling on either side in fighting these cases. But I would ask one question from Dr. Ambedkar, viz., whether there would not be cases between the Union and more than one State on the one hand,

and on the other hand between one and more than one State so as to require adjustment and arbitration, In 267 there is a provision for arbitration between Union and one State only. Nowhere the word State has been used in plural and there is no provision also for adjudication as between two States. I do not think it is possible to interpret this article so as to mean that the singular includes the plural and I therefore think it is either deliberately or has been inattentively omitted. I would like myself to be satisfied whether it is impossible that cases are likely to arise of distribution of expenditure between two individual States. I cannot conceive that it is unimaginable because they refer to a variety of cases. In this first para, it is stated as follows :-

"Where under the provisions of this Constitution the expenses of any court or commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State etc."

I can say that this can very well refer to more than one State, and if that is the position whether it is not intended that such cases should be referred to an arbitrator? If that is so, the article would have to be suitably amended. Perhaps we have to say the word 'States' should be substituted for 'State' wherever the word occurs. But I merely ask this for clarification and, if Dr. Ambedkar is convinced that there is no likelihood of such cases arising between two individual States or the Union and two other States, then of course my point would not arise. But if it is conceivable that they will arise then a proviso will also be equally necessary.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept any amendment.

Mr. President : I put the amendments to vote.

The question is :

"That for part (i) of amendment No. 102 the following be substituted:--

'(i) for the words 'Crown in India' the words 'Government of India prior to 15th August 1949 or after such commencement in connection with the affairs of the Union or the Government of a State' be substituted.'"

The amendment was negatived.

Mr. President : The question is :

"That in part (i) of amendment No. 102 of List I (Third Week) of amendments to Amendments in article 267, for the words 'in connection with affairs of the Union or of a State' (in the words proposed to be inserted) the words 'under the Government of the Union or of a State' be substituted.'"

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in

connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another State' be substituted."

The amendment was negatived.

Mr. President : The question is

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in article 267.-

- (i) after the words 'Crown in India' the words 'or after such commencement in connection with the affairs of the Union or of a State' be inserted;
- (ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;
- (iii) for the word 'revenue of a State' wherever they occur the words 'Consolidated Fund of a State' be substituted:
- (iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and
- (v) for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 267, as amended, stand part of the Constitution."

The motion was adopted.

Article 267, as amended, was added to the Constitution.

Article 268

Mr. President : We go to article 268. There is a formal amendment in the name of Dr. Ambedkar. I take it the House accepts it.

The amendment is :

"That in article 268, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Shri M. Ananthasayanam Ayyangar : Mr. President, I wish to draw the attention of the House to what an important matter this Chapter relates-- borrowing. Though the entire borrowing both of the Centre as well as of the provinces and loans may be granted by the Union Government to States are put compendiously in two articles 268 and 269, they are more important and require greater scrutiny than the powers to impose taxation, with respect to which and for the distribution of which--the revenues of both the Union and the States--we have devoted a long Chapter. My intention in speaking on this matter is to draw the attention of the House now, and later on to make sure that the Parliament will devote greater attention to this matter. We have been seeing from time to time that the revenues are being collected for the year by Finance Bills. So far as borrowing is concerned--they may be short or long-term, imposing heavy obligations upon not only the present generation but future generation also--sufficient attention is not being given to the manner in which borrowing can take place. Many of the loans which have been raised recently by provincial Governments have not been fully subscribed, some had to be withdrawn, and even we have been very chary of borrowing in the open market. I would suggest that a Commission of the kind of Finance Commission might be constituted for all time.

We do not want any other Commission. The Reserve Bank in the State. Bank and it is competent to give us advice as to what ought or ought not to be done in this matter. Development schemes generally are to be undertaken by borrowings. They ought not to be legitimately borne on the current revenues because the benefits of these schemes will be shared not only by the existing people, by the mass of the people now present, but also all the succeeding generations. From our recent budgets, it will be clear that the borrowing programmes are as wide as are the programmes for the revenues of the year. Under these circumstances, the matter of borrowing, the question of what loans are to be floated, is not being placed before Parliament. There is a similar provision in the existing Government of India Act. It is open to the Dominion Parliament to give directions as to the methods of borrowing, the amount of borrowing and so on. But all the same, all these matters have not been placed before us except as an appendix, as the tail-end of the budget, indicating what the capital outlay will be, and how in very brief outline, that money is to be made up. Parliament, when it makes provisions, should be very chary in granting permission to all and sundry loans being floated, irrespective of the capacity of the people to subscribe, etc. These and the purposes for which the borrowings take place will all be regulated by Parliament under article 268.

I find that both in articles 268 and 269, as regards loans that have to be borrowed by provinces, the consent of the Central Government is necessary in certain cases. In the present Government of India Act, there is a clause that this consent ought not to be delayed or unreasonably delayed. There is no such provision in this article, because it is thought such a provision is not necessary. Under the Government of India Act, it was thought there will be a different agency who will not be, a national of this country, in charge of the administration. But now

with national governments in the provinces and a national government at the Centre, it is felt that such a provision is not necessary. I hope articles 268 and 269 will meet the situation. They will be taken full advantage of and will help to keep even a closer scrutiny upon the revenues of the Union and of the Provinces. I support the articles as they stand. But in the matter of working, the matter will be placed before Parliament and the Executive will not take the entire responsibility on itself, of raising loans before coming to Parliament, in the future.

Prof. Shibban Lal Sakesna : Mr. President, Sir, in this article I again want to voice my feeling against arming the executive with powers to borrow upon the security of the revenues of India etc. Of course, the limits are to be prescribed Parliament by law. But beyond that, Parliament does nothing. Sir, I think in such important matters where the entire security of the State may be pawned, there must be some voice for Parliament. It must not merely be that Parliament shall fix the limit, but that in other matters the Executive shall have all the power. At least, after taking a decision, the executive must take the Parliament into confidence. After all the Ministry will have always the majority in the Legislature and whatever they may do, they will be able to carry through the House. That being so, I do not know why they should feel shy to bring these things to Parliament. I therefore, think that such sweeping powers as are proposed in this article, should not be given to the Executive. Sir, this is my only objection and I hope the House will consider it. I am sorry I did not give notice of any amendment.

Shri H. V. Kamath : Mr. President, I earnestly hope that the House will bestow very serious consideration upon this chapter, Chapter II, which refers to borrowing by the Union, or giving guarantees to loans made by other units of the Union. Borrowings can easily be one of those rocks upon which the ship of State may founder; and in modern times, and in the modern world, when economics has assumed such tremendous importance, and when loans are floated and subscribed very frequently by every State, by every country in the world, I feel that the executive of the Indian Union-to-be, should not be vested with the power to decide upon borrowing, within the limits, of course, fixed by Parliament, no matter what the purpose of the borrowing may be. I feel that the purpose for which the loan is raised, under this article must be laid before Parliament and the approval of Parliament must be sought and obtained for the purpose of that loan. But under this article 268, Parliament is empowered merely to fix the limits--I suppose it means the pecuniary limits, the monetary limits, within the limits of so many crores, and that sort of thing. Also the second part of the article relates to similar safeguards--not very important, in my estimation--regarding monetary limits of the guarantees to be given by the Union for loans. Nowhere does the article envisage the purpose for which the loan is raised or borrowed or guarantee given. In recent months, as the House is very well aware, various proposals have been made for loans from the World Bank or loans from America or from some other country as is willing to finance and promote our economic and industrial development. The House will also recollect that this House sitting as Parliament, during the last budget session and even in earlier sessions, pointedly asked the Prime Minister and perhaps the Finance Minister too whether loans borrowed from foreign countries, from America, or may be from U.S.S.R. if Government will consider such a proposal, will be subject to any political, economic or military strings. After all, I am sure that Parliament will ultimately decide our international relations. It is neither the executive nor the President but Parliament which will have the final word on what our foreign relations are going to be, what our international policy is going to be. But the executive may be at variance with Parliament in certain matters and if the executive takes it into its head to pursue a foreign policy which Parliament later on may not approve or which be quite in consonance with the decisions of Parliament in this regard, a very unfortunate situation pregnant with dire consequences may arise when a commitment will have been made by the

government of the -day-by the President and the executive-with regard to borrowing or the raising of loans from foreign countries. Of course they will not transgress the limits prescribed by Parliament. They will not borrow more than one, ten or twenty crores whatever the limit may be. But the real purpose of that loan may be kept a guarded secret, and the purpose of the loan is an essential matter which will ultimately help or hinder us, and save or destroy us. I hope the House will consider this aspect of the matter which is far more vital in my judgment than the financial limits to be fixed by Parliament. The purpose of the loan goes to the root of the matter. If the President or the executive borrows a loan from America and either in a secret pact or in some secret terms of the agreement there is some military commitment or a political commitment, to be effective in future if there be war,--that we will assist it against certain other countries,--do we wish to face such a dangerous situation as that? I therefore want that this article should be so amended as to enable Parliament not merely to fix the limits of borrowing and the giving of guarantees but also to see on every occasion that the purpose of the loan or the purpose of giving a guarantee is justified by circumstances and that it is in absolute and complete consonance with the policy adopted by Parliament in our internal as well as international relations--the more so in our foreign and international relations. If the executive raises a loan on terms contrary to the policy which has been approved of by Parliament or which may be subsequently enunciated by Parliament, a conflict may arise between Parliament and the executive and it will be too late in the day to undo the disastrous effect of a loan that might have been borrowed by the executive with certain commitments made without reference to Parliament. We must be on our guard against this situation arising in future. I plead, with the House that this is no small matter at all, to be dismissed with just a flippant consideration or just because Dr. Ambedkar or the Drafting Committee is not going to consider the matter. I plead in the name of the future of India, of the peace, liberty and progress that we all have at heart--of the peace of India as well as of the world--that this article, and this Chapter as a whole, should receive more consideration than most articles usually do at the hands of this House. I hope that not merely the financial limits but also the purpose of every loan will come before Parliament for its approval, and action is taken by the President in accordance with the policy laid down by Parliament with particular regard to our international relations or our internal policies.

Prof. K. T. Shah : Mr. President, Sir, I agree that every act of borrowing is an executive act. But the *power to borrow* need not necessarily be regarded as an Executive power exclusively, subject to such limits, if any, as Parliament may from time to time place. From this point of view I would like to suggest that the borrowing power, or the use of the national credit, is a very delicate matter. Under the Conditions under which we are now living, it cannot be treated too scrupulously or too carefully if we would bear in mind the interests not only of the present generation, but of generations to come. As we know, the security of the revenues of India--as the clause speaks here--is at the present time any rate, and judged strictly from purely economic considerations, a very thin security. That is to say, we have been, in the last ten years or so, habitually living in a deficit economy, and that deficit, considered in its budget aspect as well as in the aspect of the aggregate national economy, shows so far no sign of abatement. The various projects we have, undertaken promise to remedy these deficits within ten or fifteen years. At the present moment, at any rate, and for some years to come it seems to me that our economy being a deficit economy, borrowing would be a necessity for years to come, and, as such, we cannot too carefully regulate, limit or restrict this power.

Taking this view I think that if the Constitution categorically assigns this power to the Executive, the Constitution would be doing injustice, not only to the Legislature, but also to the interests of, as I said before, generations to come. And

for this reason. Parliament should not only regulate the borrowing by the Executive in the sense of fixing limits up to which borrowing can take place or lay down conditions for offering securities or guarantee, but Parliament should in my opinion say every year, in what may be called the Ways and Means Act, or the Finance Act, how much, shall be borrowed, so that from time to time-from year to year-the Parliament is aware of the state of the national credit and husbands it accordingly. The question is still more fearful as I conceive it, because it is very likely that borrowing within the home market may not suffice and that you may have to resort to borrowing outside the limits of the country. At that point, the danger would be much more acute than perhaps we are inclined to envisage it today. It has been the unfortunate experience of many countries which have been chronically indebted that the lender has time and again exercised influence, demanded security or guarantee, which is beyond the capacity of the country to afford. I will not quote, any remote examples, but even that country which was once regarded as the banker of the world--I mean Britain-whose credit is now being questioned is in a similar position, and the principal lender today is suggesting or inclined to interfere even in its domestic affairs. It is being alleged that the course which the present Government in England is following of all-round nationalisation bit by bit, makes the lender very nervous about the stability or security of that country. Suggestions, therefore, are not wanting that the accord between England and America may suffer.

I mention this illustration just to point out the danger inherent in a provision like this, wherein the power to borrow is left almost unconditionally to the executive, the only condition being that Parliament may impose limits as to the amount and nature of guarantees from time to time that may be given. The wording of the article suggests that even the imposition of such limits is a very doubtful proposition. The limits, "if any"-that means limits may not be there at all, and the Executive may be entitled to borrow without limit, either of the charge it may create upon the consolidated fund which will be then outside the annual votes of Parliament, or which may be so excessive that the country's entire future may be mortgaged to the lender.

Now, that is a consideration which fills me, for one, with great apprehension for the future. I am not prepared to say that there should be an utterly unconditional or unlimited power even under the Constitution to the executive to borrow up to what limits and in what manner it likes whether at home or abroad. As you know, in the past I have pleaded for more power to the Parliament as against the executive. In this instance, I am even prepared to go so far as to say that, by express provision of the Constitution, even the power of the Parliament should be restricted in the matter of the use of the national credit. Not only should the power of the executive be restricted: the executive should only confine itself to administering the law,- the Act,-under which borrowing should be authorised every year, so that every year Parliament is in a position to take stock. I go further and say that even the power of Parliament should be restricted in the nature of assurances and guarantees that it is in a position to give. Parliament should not, for instance, I suggest-be able to guarantee or mortgage the primary productive resources, nor mineral wealth nor rivers nor any of the primary sources of production on which the future happiness of the country may depend. And if such a thing as this can be done the people as a whole, I would suggest, should be in a position to know it, and a revision of the Constitution may be necessary before even Parliament could mortgage the resources of the country.

As I have said before, while I have always suggested that the supreme power should be vested in Parliament here is an instance in which, by the Constitution, I would limit the power even of Parliament to allow any borrowing within and much

more so outside the country. This article, therefore, cannot be viewed too seriously, and I would appeal to the Draftsman to reconsider this matter if he takes into account as I hope he will take, the seriousness of the stakes involved in this article.

The Honourable Dr. B. R. Ambedkar : Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes, for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to be unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law. Under the article 268, I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for Parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how this article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,-I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

Shri H. V. Kamath : Would not Dr. Ambedkar agree to the deletion of the words "if any" ?

The Honourable Dr. B. R. Ambedkar : I have been considering that, but do not think that will improve matters, because the words are "as may from time to time".

Mr. President : I take it the amendment to substitute the words "Consolidated Fund of India" is accepted.

The question is :

"That in article 268, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 268, as amended, stand part of the Constitution."

The motion was adopted.

Article 268, as amended, was added to the Constitution

Article 269

Mr. President : There are some amendments which are printed in the II Volume of the printed amendments on page 313.

(Amendments Nos. 2971 and 2972 were not moved.)

Then we shall take up amendment No. 107 by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted."

"That in clause (1) of article 269, for the words 'revenues of the State' the words 'Consolidated Fund of the State' be substituted."

"That with reference to amendment No. 2972 of the List of Amendments for clause (2) of article 269, the following clause be substituted :-

'(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.'

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter; now the action of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move :

"That in clause (3) of article 269, The words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

Shri Brajeshwar Prasad: I am not moving amendment No. 108.

Shri H. V. Kamath : No. 146, I believe, is a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Shri B. Das : (Orissa : General) : Sir, article 268 empowers, Parliament to fix by law the amount that could be borrowed by Provincial Governments. Article 269 was originally drafted differently. Now, the amendments that have been moved by Dr. Ambedkar shows that article 269, as sought to be amended by him, imposes

further burden on the Minister of Union Government. It also imposes additional burden on the Auditor-General of the Government of India without whose advice the Parliament will not be able to decide.

Today the Union Government is charged with additional responsibility of the borrowings of the States. Of course, it is qualified that such loans, such borrowings will be within the territory of India and also will be upon the security of the revenues of the State. Sir, if we examine the finances of the various Provincial Governments we will find that except a few crores of loans that were raised when the Congress assumed responsibility for the administration of provinces in 1936, all loans have been borrowed on the credit of the Government of India, which task in future devolves on the Union Government. We have recently heard a controversy that certain provinces thought that they have the power to borrow any money. Certain provinces revolted and they thought that they can float any loans and issue any bonds or securities whether negotiable or non-negotiable. Those of us who think that all borrowings should be done through the Union Government felt at that time at the national credit of the Union Government would suffer if provinces were given the freedom in the matter of borrowing. I do not understand what is the security of the revenues of the Provincial Governments. Who is to fix them? Will the Auditor-General fix at the time of the promulgation of this Constitution that such and such States and such and such provinces will have so much power of borrowing?

Unfortunately, I do not like the wording of article 268. How will Parliament fix by law the amount of borrowing every year for the Union and for the different provinces. Sir, as my memory goes over the past twenty-five years, I do not remember a single occasion when the alien Government which ruled over us, consulted Parliament over their borrowing policy. It always came in through the backdoor of explanatory memorandum. Never has the Government of India introduced the practice of raising a debate on their borrowing policy. The borrowing is sanctioned when the Budget is passed, Then we have article 269 under which the finance ministers of the States can claim sums of money for the development of their States. Whatever money they claim, article 269 is going to provide. It will be a charge on the revenues of the State. But who will be the judge as to whether a certain province has got the paying capacity? Already the Government of India is committed to large development schemes on behalf of the provinces. We have the Bhakra Dam in East Punjab, the Hirakund Dam in Orissa, the Damodar Valley Corporation in Bengal and the Kosi Dam in Bihar about which my friends from Bihar are so very anxious. Who is to judge that these development projects will stand the national credit of the particular provinces for which the money is borrowed? I wish there is someone to do this. I think, Sir, whatever be enacted in articles 268 and 269, we must not throw this responsibility on Parliament alone. Parliament, as I know it for the last twenty-five years, pays very little attention to the question of borrowing. If I remember aright, there have been only half a dozen debates in all during the last twenty-five years on the policy of borrowing. Will we improve our financial knowledge, in the next few years when we will be discussing the national credit of the Union and of the provinces and who, will say boldly that such and such provinces will only have so many crores of loan and nothing more? Unfortunately when provincial feelings come into play in the discussion over such matters, members simply fight for the benefit of their own provinces. I think articles 268 and 269 envisage giving more powers to the Auditor-General. The Auditor-General must review and submit the papers to the Members of parliament every year about the credit of each province, apart from the Union Government. The Auditor-General is not now doing that. I am discussing the handicaps that surrounds us in considering questions of this kind. Unfortunately the Finance Department of the Government of India is still following the old tradition and treating the Auditor-General as a mere auditor of a company, where the directors tell him to overlook

certain errors and malpractice. But if the House accepts article 269 as it is, the House should somehow incorporate some provision whereby the Auditor--General must report to Parliament the credit conditions of the Provinces. Most of us are laymen and politicians. Very few members of Parliament will be financiers. Financiers do not belong to the class of democracy from which we come. The future legislatures will not contain businessmen or men who understand stock exchanges or the financial credit of our country. Therefore, there is a double duty imposed by article 269 and I would ask my honourable Friend Dr. Ambedkar to explain how he thinks that Parliament will understand and appreciate the national credit of each of the States and of the Union and how it will limit the amount of borrowing of the Union Government and the States. The Parliament is empowered under article 268 and is going to be further empowered by article 269 to maintain the national credit of India. But then how will the national credit of India be maintained ? I view with grave concern article 269. If any province rebels against the Centre and against the unification of the national economy of India, the national credit will not be a settled fact. Some other method must be thought of.

The Honourable Shri K. Santhanam (Madras : General): Sir, I wish to say a few Words with reference to one point which struck me when Prof. Shah was speaking on article 268. Prof. Shah suggested that the Government of India and even Parliament should not be entitled to pledge the primary resources of the country in order to borrow. I entirely agree. But, according to my reading of articles 268 and 269, there is no question of either the Government of India or any State pledging any particular resources for any particular borrowing. They give power to borrow only on the security of the Consolidated Fund of India or of the States. It will not be open to the Government of India to say that they pledge the railways for a particular loan, say from America. Only the entire Consolidated Fund of India will be the security. It means that it will only be a general security of the credit of the people of India. There can be no question of particular general resources or the railways being pledged for any loan either from abroad or internally. The same will be the case with every State. Therefore there should be no apprehensions on the point. I think the plain meaning of articles 268 and 269 makes it certain in this respect. I would, however, like to suggest to Dr. Ambedkar that, if there, is the slightest doubt in the wording, the Drafting Committee should look into it and remove the doubt. It should be made clear that the only security should be the general credit of the whole of India or of a State and not particular resources.

The Honourable Dr. B. R. Ambedkar : I do not think, Sir, any reply is called for.

Mr. President : I will now put the amendments to the vote.

The question is :

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (1) of article 269, for the words 'revenues of the State' the words Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted : -

'(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.'

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That article 269, as amended, stand part of the Constitution."

The motion was adopted.

Article 269, as amended, was added to the Constitution.

Articles 5 and 6

Mr. President : We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together I think Dr. Ambedkar.

Prof. K. T. Shah : May I know what happens to the amendments in the Printed List? They have all been tabled as amendments to the original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

Mr. President : If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

Dr. P. S. Deshmukh : If the original draft is not moved, all the amendments tabled to that draft go by the wind.

Mr. President : We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

The Honourable Dr. B. R. Ambedkar : Sir, May I give the references? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List I. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T.T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read "of the proposed article 5A" instead of "of the proposed article 5". It is a printing error. With these preliminary observations, so to say, I move my amendment:

"That for articles 5 and 6, the following articles be substituted:---

"5. At the date of commencement of this constitution, every person who has his domicile in the territory in

	India and-
	(a) who was born in the territory of India: or
Citizenship at the date	(b) either of whose parents was born in the
of Commencement of	territory of India: or
this Constitution.	(C) who has been ordinarily resident in the
	territory of India for not less than five years
	immediately preceding the date of such
	commencement,
	shall be a citizen of India provided that he has not voluntarily acquired the
	citizenship of any foreign State.

	5-A. Notwithstanding anything contained in
Rights of citizenship of	article 5 of this Constitution, a person who has
certain persons who have	migrated to the territory of India from the territory
migrated to India from	now included in Pakistan shall be deemed to be a
Pakistan.	citizen of India at the date of commencement of
	this Constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made

by him therefore to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

Rights of citizenship of certain migrants to Pakistan.	5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :
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Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

Shri Jaspat Roy Kapoor (United Provinces : General): This, you had said, would be moved by Mr. T.T. Krishnamachari.

The Honourable Dr. B. R. Ambedker : I have been considering that, but I ted article as I am proposing to accept the amendment which will be moved by him.

Right of citizenship of certain persons of India origin residing outside India.	5-B. Notwithstanding anything contained in article 5 and 5-A of this Constitution, any person who or either of whose parents or many of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form, prescribed for the purpose buy the Government of the Dominion of India or the Government of India.
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Continuance of the rights of citizenship.	5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall subject to the provisions of any law that may be made by Parliament, continue to be such citizen.
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Parliament to regulate the right of citizenship by law.	6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."
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Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T.T. Krishnamachari and that will complete the thing.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from several amendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and redrafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft or if they are to be moved, if they are to be moved in an altered form just as a consequential measure.

I submit that substantially in amendment No. 1 in List I and in some other amendments in other Lists which are now consolidated there has been a great deal of departure from the Draft Constitution and the point that I took the other day is more applicable today than at any other time. There are absolutely new clauses, which purport to be amendments of articles 5 and 6, for instance proposed new articles 5A, 5B, 5C; then there are other articles like 5AA; then there is a new proviso in amendment No. 131 and amendment No. 130 is entirely new. Then in amendment No. 133 there is a new redraft of article 6. I submit, Sir, these amendments or this consolidated amendment amounts largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself. As I submitted the other day there was a time fixed by you for submitting regular amendments and then it was ruled by you, and it was applied in many cases, that amendments to amendments alone would be submitted; but then this present amendment or a consolidated amendment, consisting of a large number of amendments, consists of amendments of the Constitution itself and that is creating a considerable amount of difficulty. We are departing from the Draft Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution. I ask you, Sir, to consider whether these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in our *ex tempore* amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

Mr. President : I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting

Committee to reconsider the original draft and propose new drafts where necessary.

In that view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to their own draft. What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment. But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment as proposed by Dr. Ambedkar. We can take up the discussion of the consolidated amendment which has been moved by Dr. Ambedkar tomorrow morning, and the Members will have time by then to study the amendments in the consolidated form. In the meantime, I do not like to waste even the half hour that we have, and if Members have any other amendments to move, they might move them today so that we might take up the consideration of the amendments as well as the draft as moved by Dr. Ambedkar tomorrow morning.

Prof. Shibban Lal Saksena : May we have Dr. Ambedkar's speech today?

Mr. President : Yes, I would ask Dr. Ambedkar to explain his amendment.

Mr. Naziruddin Ahmad : Amendments Nos. 130 and 131 have been circulated only this morning and we have had no opportunity of considering them. Then if we are to get the consolidated amendment today, there will be no time to suggest amendments which will be in time before the House.

Mr. President : If there is any reasonable grievance on that account, I will take that into consideration.

Shri T. T. Krishnamachari : I move amendment No. 131 of List IV. I move :

"That in amendment No. 130 above, to the proposed article 5-AA the following proviso be added:-

'Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of law and every such person shall for the purposes of clause (b) of article 5-A of this constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.'

There is one other formal amendment which I have to move. It is No. 132.

I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5-B, the words 'and subject to the provisions of any law made by Parliament' be omitted."

Sir, I shall not explain these amendments. If necessary, Dr. Ambedkar will explain them.

Shri Jaspal Roy Kapoor : May I suggest that all the amendments which are on the list may also be formally moved today.

Mr. President : First, let Dr. Ambedkar explain his viewpoint and then the other amendments may be moved.

Shri Jaspal Roy Kapoor : I venture to make that suggestion because if all the other amendments are also moved, Dr. Ambedkar will have an opportunity of saying something with reference to those amendments also. The other amendments may simply be moved but no speeches may be made on them, so that the House may be in possession of all the amendments.

Mr. President : If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

An Honourable Member : Question.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this article refers to, citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads-

"Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can,

provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

(1) Persons domiciled in India and born in India : In other words, who form the bulk of the population of India as defined by this Constitution;

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee to bring within the ambit of this article are :

(3) Persons who are residents in India but who have migrated to Pakistan;

(4) Persons resident in Pakistan and who have migrated to India: and

(5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people *viz.*, persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article, 5 Clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, *viz.*, that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class, *viz.*, persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India-they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them--one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have

migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these-

Those persons who have come to India from Pakistan are divided into two categories--

(a) those who have come before the 19th day of July 1948, and

(b) those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the, 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.*, he again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date commencement of the Constitution are put into two categories-those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948 citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

Shri B. M. Gupte (Bombay: General): Was the permit system brought in on 19th July 1948 ?

The Honourable Dr. B. R. Ambedkar : Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that, on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

Mr. President : I think we shall take up the amendments tomorrow. But before I adjourn, there is one thing about which I would like to take the sense of the House. In the next week, Monday which happens to be the 15th of August, is a holiday, and then Wednesday the 17th is also a holiday on account of *Janamashthmi*. It has been suggested to me that we might not meet on Tuesday so that Members might have a continuous four or five days from Saturday to Wednesday, and we might meet on Thursday; and instead of Tuesday, we might meet on the following Saturday. If that meets the wishes of the House, we can arrange our programme like that.

Honourable Members : Yes.

Mr. Naziruddin Ahmad : A long adjournment might make us forget everything.

Mr. President : I think you will get time again to study. So, we shall sit up to Friday next, and then adjourn till 9 O'clock on Thursday, and we shall sit on the following Saturday also.

Now the House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 11th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(Contd.)

Articles 5 to 6-(Contd.)

Mr. President : We shall now take up consideration of articles 5 and 6. I have been looking into the amendments of which notice has been given. A large number of the amendments relate to the original Draft, but quite a good number relate to the present Draft also. I think the consolidated form in which the proposition is now placed before the House meets the point of view of many of the amendments of which notice has been given. There are some which touch the details. I would ask honourable Members to confine their attention to only such of the amendments as are of substance and leave out the others.

With regard to the amendments relating to the original Draft I find there are some amendments which deal with matters altogether outside the Draft. For example, there is an amendment dealing with the status of women after marriage--whether they become citizens or not. There are others also which deal with the position of persons who are not born Indians or born of parents or grand-parents who were Indians. I think all these matters under the present Draft are left to be dealt with by Parliament in due course. I would, therefore suggest that amendments of this nature might also be left over to be dealt with by Parliament at a later stage and we might confine ourselves to the limited question of laying down the qualifications for citizenship on the day the Constitution comes into force.

Dr. Ambedkar drew the attention of the House to two important limitations. The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters, including those which are dealt with by the present Draft, are left to be dealt with by Parliament as it considers fit. With these limitations in mind I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly.

I would suggest to Members to bear these considerations in mind when moving their amendments. We shall now take up the amendments of which I have received notice and I will take them up in the order in which they are on the list of the current session. Dr Deshmukh.

Dr. P. S. Deshmukh (C.P. & Berar : General) : May I also refer to the other amendments of which I have given notice?

Mr. President : Yes, you may take them together.

Dr. P. S. Deshmukh : Sir, this article on the question of citizenship has been the most ill-fated article in the whole Constitution. This is the third time we are debating it. The first time it was you, Sir, who held the view which was upheld by the House that the definition was very unsatisfactory. It was then referred to a group of lawyers and I am sorry to say that they produced a definition by which all those, persons who are in existence at the present time could not be included as Citizens of India. That had therefore to go back again and we have now a fresh definition which I may say at the very outset, is as unsatisfactory as the one which the House rejected and I will give very cogent reasons for that view of mine. But if it is necessary that I should move my amendment before I do so, I am prepared to do it. I would, therefore, like to move amendment 164 which is the same as amendment 2 in List III of Second Week. Sir, I move:

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, for the proposed article 5, the following be substituted:-

'5. (i) Every person residing in India--

(a) who is born of Indian parents; or

(b) who is naturalized under the law of naturalization; and

(ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides

shall be entitled to be a citizen of India.' "

There are also, Sir, standing in my name other amendments which refer to the draft article that is before the House. By these amendments I have suggested the alteration of the article as proposed by the Honourable Dr. Ambedkar. The first of these amendments is No. 116 in List III of the Third Week. It reads as follows:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5, the words 'at the date of commencement of this Constitution' be deleted."

Mr. President : They are all consolidated in List I of the Third Week.

Dr. P. S. Deshmukh : Yes, Sir. But I have taken them from previous lists. I have suggested the omission of the words : "At the date of commencement of this Constitution".

I do not propose to move No. 117. I would like however to move 118 in List III of the Third Week. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, for clause (a) of the proposed article 5, the following be substituted :-

'(a) who was born of Indian parents in the territory of India.' "

Thirdly, I would like to move amendment No. 119 in List III of the Third Week. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the word 'five', the word 'twelve' be substituted."

This is the number of years for which residence is required for any person.

I would also like to move amendment 120 in List III of Third Week, which I believe is going to be accepted because a similar amendment has been moved by Shri Gopalaswami Ayyangar: Sir, I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, the Explanation to the proposed article 5 be deleted."

I would next like to move amendment 172 in List III of Second Week Sir, I move :

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, in the proposed new article 5-A, after the words 'territory of India' the words 'of Indian parents' be inserted."

The last amendment is No. 183 in List III of Second Week. I move :

"That in amendment No. 1 of list I (Second Week) of Amendments to Amendments after the proposed new article 5-A, the following new article be inserted:-

'5-B. Every citizen shall-

(a) enjoy the protection of the Indian State in foreign countries;

(b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes.' "

These are all the amendments that I would like to move. The rest May be treated as not moved.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : May I suggest that all the amendments be moved first and then there can be a general discussion? Members could then have an overall picture of the proposals.

Mr. President : If that is the wish of the House, I have no particular objection.

Dr. P. S. Deshmukh : As the number of amendments is very large it would create confusion to let members only move the amendments and then call them to speak.

Mr. President : It seems that Members find it more convenient to speak when they are moving their amendments.

Dr. Deshmukh, you may proceed.

Pandit Hriday Nath Kunzru (United Provinces : General): Can you kindly tell us which amendments have been moved ?

Mr. President : I will give you the numbers in this week's list: they are Nos. 3, 17 and 29.

Then from List III of the Third Week: amendments Nos. 116, 118, 119 and 120.

Dr. P. S. Deshmukh : The Honourable Dr. Ambedkar admitted that this was a sort of a provisional definition and detailed legislation was going to be left to Parliament. I quite agree with the objective, but I am afraid that the definition and the article that he has suggested would make Indian citizenship the cheapest on earth. I would like to proceed with an analysis of the article that he has proposed. I do not see any reason why it is necessary to say "at the date of commencement of this Constitution". The whole Constitution is going to be promulgated on a specific day. Whatever provisions there are will come-into force and be applicable from that

day alone. So, I submit that the words "at the date of the commencement of this Constitution" are entirely superfluous, so far as this article is concerned. It is sufficient to say that every person, wherever domiciled in this territory of India shall be entitled to be called a citizen of India.

Secondly, all these sub-clauses of this article will make Indian citizenship very cheap. I am sure neither the Members of this House nor the people outside would like this to happen. The first requirement according to this article is domicile. After that, all that is necessary according to (a) is that he should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. I am sure this is not what at least many people would like to accept and provide for. Indian citizenship ought not to be made so very easy and cheap.

Then sub-clause (b) says "either of whose parents are born in the territory of India". This is still more strange. It is not necessary that the boy or the girl should be born on the Indian soil. It is sufficient not only if both the father and the mother have been born in India but if even one of them, happens to be born on the Indian soil as accidentally as. I have already pointed out, *viz.*, a lady delivering a child in the course of an air-journey through India. Under the proposed sub-clause (a) the child would be entitled to claim Indian citizenship and under (b) even the son of that child (which happened to be born so accidentally) can claim the same important privilege without any restriction and without any additional qualification whatsoever. Nothing more is necessary except that they should acquire a domicile.

According to sub-clause (c) Indian citizenship is obtainable by any person "who has been ordinarily resident in the territory of India for not less than five years". This has also no reference to parentage, it has no reference to the nationality or the country to which they belong, it has no reference to the purpose for which the person chose to reside in this country for five years. For aught I know he might be a fifth columnist: he might have come here with the intention of sabotaging Indian independence; but the Drafting Committee provides that so long as he lives in this country for five years, he is entitled to be a citizen of India.

The whole House and the whole country is aware of the way in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country. The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there. I have known of people who have been there in America and holding various offices for fifteen, twenty and twenty-five years and yet their application number for citizenship is probably 10,50,000th. There is no hope of such a person getting his citizenship until the 10,49,999th application is sanctioned. In America Indians can obtain citizenship at the rate of 116 or 118 per annum. That is the way in which other countries are safeguarding their own interests and restricting their citizenship. I can well understand, if India was a small country like Ireland or Canada (which are held out as models for our Constitution) that we want more people, no matter what their character is or what the country's interests are. But we are already troubled by our own overwhelming population. Under the circumstances how is it that we are making Indian citizenship so ridiculously cheap? There is no other word for it.

As I have already pointed out one of the sub-clauses says anybody who has chosen to stay in India for five years shall be a citizen of India. I had asked the Honourable Commerce Minister (when Mr. C. H. Bhabha was in charge) a question, when sitting in the other Chamber, as to whether there was any register of foreigners coming to India. He said "No". I asked if there were any rules and regulations governing the entry into the country of people from foreign countries and he said there were none. I have no doubt the situation continues very much the same today. Such is the administration that we have. Is it then wise that we should throw open our citizenship so indiscriminately ? I do not side any ground whatsoever that we should do it, unless it is the specious, oft-repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular? I do not think that that is the meaning of secularity and if that is the meaning which people want to attach to that word "a secular state". I am sure the popularity of those who take that view will not last long in India. I submit therefore that this article is unsatisfactory and worthy of being discarded as we did the previous article, because there is nothing that is right in it. If really we want a tentative definition we can have it from other people, who are probably wiser than us and that should be quite enough for us. That is one of the definitions that I have proposed in my amendment No. 164, viz.,

"Every person residing in India-

(a) who is born of Indian parents; or

(b) who is naturalised under the law of naturalisation..."

I do not mind if it is left to Parliament to debate the whole question of the citizenship of India. But for the present this very short and brief definition may be absolutely sufficient and that is my contention. and my submission to the House. It must be made clear that citizenship shall be primarily obtainable by a person who is a born of Indian parents and I do not exclude even those who had been in India previously, provided the requirement of domicile is satisfied. If they are resident here in this country, or if they have not claimed citizenship of any other country or if they are born of Indian parents they shall be entitled to citizenship of India. So far as other persons are concerned, there will be the law of naturalisation which would make detailed provisions. We can lay down the business, the purposes for which or the way in which a person who-claims Indian citizenship chooses to live in India. There would be ample time for the Parliament to debate this question and to lay down the principles. But if you are going to have this definition at this moment you are going to tie your hands, you are going to tie the hands of Parliament from interfering later. Will you then have the courage to deprive them of citizenship, the hundreds and thousands of them who have had it under the Constitution ? It is impossible, it is quite improbable and no Parliament in India is going to take such a drastic step as to correct the foolishness that we are complacently committing today. I do not think any Parliament will be able to do it. Therefore I do not like citizenship to be made so cheap or so easily obtainable, because once you do it in this Constitution it will be very difficult for you to go back on it.

And then, this is not a definition in an Act of Parliament that is easily changeable. So, if by the Constitution you are going to give this right of citizenship in the way proposed in this article, you cannot change it later on and this will go against the interests of the Indian nation. So I have proposed that the

circumstances and conditions of naturalisation should be left to be decided later on. Nothing need be done on this question by the Constituent Assembly at this stage. Every condition and every circumstance, which we are convinced should be laid down and satisfied for the conferment of citizenship right on an individual, should come into play when we pass the Naturalisation Act in Parliament. We should not lay down some conditions here in the Constitution and some conditions elsewhere for the grant of citizenship rights. The fact that a person is born in India should not be sufficient ground for the grant of citizenship, nor should five years' residence be sufficient. I say that we should leave all these things for the Parliament to lay down. We should merely say here that every person residing in India who is naturalised under the Law of Naturalisation will be a citizen of India.

In the second sub-clause I have proposed, I want to make a provision that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have a home of their own and a country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. By the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others. But we are a secular State and do not want to recognise the fact that every Hindu or Sikh in any part of the world should have a home of his own. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not think this claim is in any way non-secular or sectarian or communal. If anybody says so, he is, to say the least, mistaken. I think my description (amendment) covers every possible case. The only thing we are agitated about is that our people, thinking that Pakistan would be a happy country, went there and came back. Why should we recognise them by means of this or that provision in the Constitution? Because, nothing of the sort is necessary. So long as they are resident in India when the Constitution is promulgated and they are born of Indian parents, they should be entitled to citizenship rights without any fresh registration or evidence. That is what is contemplated in my definition. I hope the House will accept it.

Prof. Shibban Lal Saksena (United Provinces: General) : You say, 'being born of Indian parents'. How do you define 'Indian parents'?

Dr. P.S. Deshmukh : I think it should refer to all those persons who are resident in India. It would be quite easy to define it. If the Professor thinks a definition is necessary, it would be quite easy to frame one.

Prof. Shibban Lal Saksena : Then give a definition?

Dr. P. S. Deshmukh : Yes. I thought that an Indian is a very easily recognisable person. When combined with domicile, it is easier to define it. But if the Professor thinks that an Indian cannot be recognised and that it is necessary to lay down who is an Indian, what is his colour and complexion and so on, I would leave it to him to suggest a suitable definition. I think the existing definition is capable of being understood without any difficulty. I do not think that a definition is necessary for every expression used. If you examine the Constitutions of other

countries, the Constitution of Poland for instance, you will find that all that they provided is that any person who is born of Polish parents is a citizen of Poland. They know who is a Pole, just as we know who is an Indian. I do not think therefore that any definition is necessary in this connection. If we want a tentative definition, an article which will serve as a transitory provision, my article should be quite enough.

I now come to my remaining amendments. I case my definition and the article, the substance of which I have given, are not accepted, I have suggested that, in the article proposed by the learned Doctor, the words "at the date of the commencement of this Constitution", should be omitted. Then, in (a), after the words 'who was born in the territory of India', the words, 'born of Indian parents' should be added, and in (c) the words 'at least' should be added before the words 'five years'. I would like the word 'five' to be altered to twelve so as to make it necessary for anybody to obtain citizenship by residence in India for that period.

So far as the Explanation is concerned, I think the Doctor himself is convinced that it is not necessary to retain it and for very good reasons. It says: "For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan". I see no reason why Pakistan should be singled out. The word 'migrated' has a definite meaning. It means going out of the country with the intention of settling permanently in some other country and not remaining in the country from which he has migrated. If the meaning of the word 'migrate' is clear, then nobody who leaves the Indian shores and goes out - it does not matter whether he goes to Pakistan or Honolulu or the North or the South Pole, he will not be entitled to the citizenship of India. Therefore the explanation is meaningless.

In addition to this I have proposed that there should be some responsibility which ought to be shared by every one who claims to be a citizen of India and for that purpose. I have proposed amendment No. 29 that "Every citizen of India shall enjoy the protection of the Indian State in foreign countries; and (b) be bound to obey the laws of India, serve the interests of the Indian communities defend his country and pay all taxes". I would not like to press this very much because even this must be possible to include in the Naturalisation Act, when we pass it. You have also suggested, Sir, that all these might be left to Parliament. In view of that I would not mind withdrawing this amendment. But I would like to move my other amendments. If, however, my whole article is accepted, then there would be no need to move the other amendments which deal with the wording of the article as proposed. Otherwise it will be necessary that those words to which I have objected ought to be omitted.

Mr. Naziruddin Ahmad : Mr. President, Sir, I have a few amendments to move. Before I do so, may I request your ruling as to whether I am to speak on my own amendments or to speak generally on the article. I think it would be inconvenient if I have to speak on the article generally. This should actually be at the end, because I do not know what further amendments would be moved. I however would like to say that there would be no repetition. Sir, may I have your ruling as to whether I should only move and speak on my amendments or generally on the article.

Mr. President : I think it would be much better if you make only one speech.

Mr. Naziruddin Ahmad : There is no doubt about it, but it will be inconvenient to speak generally on the article unless we get all the amendments before us. That is the difficulty. Further, I find that in spite of your kind help to inform the Members

as to what amendments are to be moved, there is yet some amount of confusion among some Members as they still do not know what amendments have been moved. The difficulty has been caused by last-minute changes, and the number of Amendments is due to the fact that there have been constant changes.

Mr. President : I think the difficulty has arisen because Members have been offering to lists of previous weeks. The system that has been followed by the Office is to consolidate all the amendments at the end of the week and to put them into the first list of the next week, so that all the amendments that remained by the end of the second week are consolidated in the first list of the third week, and any further amendments that come in the third week are put, down in the subsequent lists, II, III etc. Dr. Deshmukh referred to the previous week's lists but I have mentioned the corresponding numbers in the existing week's lists. So, if the Members refer to the lists of the current week, they will find all the amendments according to their number. If the Member so desires, I will mention the numbers once again.

Mr. Naziruddin Ahmad : I do not know whether all Members have got the correct numbers by this time, but so far as I am concerned, I know What amendments I shall move. I shall move from List I amendments Nos. 4, 18, 22, and 30 and from List V amendments Nos. 148, 149, 151, 153, 154, 155 and 156. There may be one or two others, but I hurriedly noted down only these numbers.

Sir, I move amendment No. 4 in List I -

"That in amendment No. I above, in the proposed article 5, for the words 'At the date of commencement of this Constitution every person who' the words 'Every person who at the date of the commencement of this Constitution' be substituted.

Sir, I will omit the word "date", and so my amendment will substitute the words "Every person at the commencement of this Constitution" for the words "At the date of commencement of this Constitution every person who". I shall explain the necessity for this amendment at once. The expression "date of commencement of this Constitution" is not proper. We have throughout this Constitution always referred to the "commencement of this Constitution" That clearly and distinctly refers to the "date" of the commencement. Commencement only refers to the date. So, the "date" of the commencement of this Constitution" is unnecessary. Therefore I have sought to remove the words "date of". It is unnecessary and in other contexts it does not appear. The rest of this amendment is merely a rearrangement of the article to give more emphasis to the words "every person". That is my first amendment.

Then I come to amendment No. 18 in the First List. Sir I move :

"That in amendment No. 1 above, in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'which at the commencement of this Constitution is situated within the Dominion of Pakistan' be substituted."

I submit, Sir, that in the context of article 5-A as proposed by Dr. Ambedkar, the word "now" is extremely ambiguous. It is at any rate unprecise. If the words "territory now included in Pakistan" are used, we do not know to what period of time the word "Now" refers. Does it refer to this date, the date on which this amendment is accepted? Does it refer to the 11th August 1949 or does it refer to the date when any lawyer or jurist reads the article? In fact, the word "now" is very unprecise. It has never been used in any part of this Constitution. Therefore for the word "now" I would like to substitute the words "commencement of this

Constitution". The rest is merely verbal. The word "now" is highly objectionable, it is vague and it may lead to some difference of opinion.

The next amendment which I would like to move is amendment No. 22 in the First List. Sir I move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

I have already explained the reason for removing these words. If we remove these words, it will read "the commencement of the Constitution". It certainly means the date of commencement of the Constitution.

Sir, I move :

"That in amendment No. 1 above, in the proposed new article 5-B, for the words 'made by Parliament' the words 'made in this behalf by Parliament' be substituted."

This is merely verbal and I suggested this by way of improvement. This may be considered by the Drafting Committee. That concludes List No. 1 of Third Week. Then I come to List V, Third Week.

Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed article-5, in line I, the words 'date of' be deleted."

It refers to the same thing and perhaps it is a duplication of amendment No.4 and if that is so then it would be unnecessary. I move also amendment No. 149 in List No. V

Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, the words 'the date of' be deleted."

I have already explained the need. Then I move amendment No. 151.

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words 'a person' the words 'any person' be substituted."

In proposed article 5-A the text of the article runs thus: "Notwithstanding anything contained in article 5 of this Constitution a person who has migrated to the territory of India" and the word "any person" would be better. The word "any person" has been used in a similar context in proposed article 5-B. "A person" is rather vague and "any person", though meaning the same thing, is more precise and besides this amendment, if accepted, would make the drafting of this clause and clause 5-B the same. It is a drafting amendment and may be left over for consideration by the Drafting Committee.

I then move amendment No. 153:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

It occurs in connection with the date of the commencement of the Constitution. These words, as I have Already explained are unnecessary.

Then I move amendment No. 154:

"That in amendment No. 130 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words 'a person' the words 'any person' be substituted."

I have already explained the necessity for this amendment.

I also move amendment No. 155:

"That with reference to amendments Nos. 130 and 131 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words 'now included in Pakistan' in the two places where they occur, the words 'Which at the commencement of this Constitution is included in the Dominion of Pakistan' be substituted."

The main purpose of this amendment is to remove the word "now" and to put in its place a more precise expression, namely, "at the commencement of" in the context of the article. The rest of this amendment is merely verbal.

Then I also move my amendment No. 156:

"That in amendment No. 133 of List IV (Third Week) of Amendments to Amendments, for the proposed article 6, the following be substituted:-

'6. Notwithstanding anything contained in the foregoing provisions of this Part. Parliament may by law make further provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Provided that the making of any law by Parliament referred to in this article shall not be deemed to be an amendment of this Constitution within the meaning of article 304 of this Constitution.' "

With regard to this amendment, the first part, the body of the proposed article 6 is more or less verbal, but the proviso is new and I have suggested it simply to obviate the difficulties which would attend to the amendment of the Constitution itself. We are providing some rules of citizenship in the Constitution. By article 6 we authorize the Parliament to make further laws, lest it be said later on if the Parliament does so, it would have the effect of amending the Constitution itself, because it is quite conceivable that Parliament may make laws which will undo or at least modify clauses which are under consideration. That would involve the amendment of the Constitution itself. We have in a similar context taken care to provide that these amendments which are merely of a mechanical nature and not likely to go into the root of the Constitution may be done by Parliament and we have provided in those cases as a matter of caution that these amendments made by Parliament shall not be deemed to be amendments of this Constitution within

article 304. So any possible controversy that the amendments are amendments of the Constitution itself would lead to almost an impasse by setting in motion the entire apparatus of amending the Constitution which would be highly inconvenient. On a small matter like this the matter should be left entirely to Parliament without it being considered to be an amendment of the Constitution itself. These are my amendments.

With regard to the entire set of articles proposed by Dr. Ambedkar, his amendments are needlessly cumbersome and as Dr. Deshmukh has pointed out, will lead to the introduction of "cheap" citizenship in India. I should suggest that it would introduce something more. Continuing the example cited by Dr. Deshmukh that a foreign lady, while passing through India on an aeroplane journey, gives birth to a child in Bombay, the child at once acquires the citizenship of India. Dr. Deshmukh thinks that this would be too flimsy a ground to give the child the status of an Indian citizen. I should submit it would lead to other serious consequences. The mother of the child in the example is a foreigner. It is conceivable, and it is easy to take it that the law of the country of her domicile will claim the child as her own citizen. In fact, citizenship follows parentage. The father's domicile would also be the child's domicile. So, the father's or the mother's domicile will compete with the child's citizenship of India. On the one hand, India will claim the child to be a the citizen of India and the mother of the child will claim the child to be a citizen of her domicile. It is conceivable that the father has another nationality and he claims the child to belong to that nationality. All the three countries will compete with one another and claim the child to belong to his or her own nationality. Carrying the illustration a little further, there are the grand parents; the four grand parents father and mother of the mother and father and mother of the father. There are thus again four sets of claimants whose nationality will decide the citizenship of the grand-child. The four different countries may claim the child to belong to them. What is more, the, child is in a particularly favourable or unfavourable position of claiming or disclaiming the nationality of India or the nationality of the mother or the father and those of the four grand parents. It will mean a confused state of affairs. The manner in which these articles have come into being and have been presented to the House and the way in which amendments have been coming in from day to day, to say the least and to quote Dr. Deshmukh, is very unfortunate. I think a subject of this difficulty and complexity should not have been dealt with in this fashion and I should have thought it much better to have postponed the consideration of these articles and allow the Members to have an over-all picture of the entire subject together with the suggested amendments. I find that I am not the only member of this House who finds it difficult to follow even the reprint of the entire Draft because we have to consider the amendments and place them in their context and consider this effect. To do so accurately is not an easy job. As I have already submitted, there are many slow Members like me in this House who find it also equally difficult not only to follow the intricacies of this proposed new clause, but also the amendments to be proposed. It is this state of affairs which almost forces many Members to be inattentive and we appreciate the very just remarks which you made yesterday that many Members are interested in discussions having nothing to do with the amendment or the subject under consideration. The real reason is that the amendment and the new ideas come in too late to the Members for real consideration. The subject of these series of articles will inevitably lead to inattention because it is a little bit difficult to follow them without mistake. As these are difficult matters and as there are anomalies. I feel, that if we postpone the discussion of these articles for further consideration, more complications will follow. Therefore, the best course would be to adopt these articles and to provide for any correction or supplementation if there is necessity through the excuse of article 6. That would to a certain extent avoid any complications which may unconsciously be created by further amendments. That would afford an excuse to Members for going more deeply into the matter; we relegate our thoughts and our labours to the

future Parliament which may cure defects if there are any in these drafts. It will be very difficult to follow them and it will lead to confusion of nationalities landing us in difficulties, not merely granting cheap citizenship. These are the few words that I have to submit before the House.

Shri Jaspat Roy Kapoor : (United Provinces: General) : Mr. President, Sir, the first amendment that stands in my name is amendment No. 5 in the First List, Third Week which relates to the definition of citizenship subsequent to the date of the commencement of this Constitution. In view of the explanation which Dr. Ambedkar gave yesterday that his intention was to confine the definition of citizenship only at the date of the commencement of this Constitution and more particularly in view of your advice that we should confine our remarks only to this aspect of the question, I should not venture to move this amendment. But, Sir, I find that the Draft which has been moved by Dr. Ambedkar is not a provisional Draft, but it is of such a limited nature that it does not make any provision for the acquisition of the right of citizenship subsequent to the date of the commencement of this Constitution even up to the period that Parliament may make any law in this respect. I, therefore, suggest to Dr. Ambedkar to seriously consider whether it would not be advisable to accept the suggestion contained in this amendment. The suggestion reads like this :

"That in amendment No. 1 above, in the proposed article 5 -

after the words 'at the commencement of this Constitution' the words 'and thereafter' be inserted; and

In clause (a) after the word 'was' the words 'or is' be inserted;

or alternatively, that with reference to amendment No. 1 the following new article be inserted as 5-D:-

'After the date of the commencement of this Constitution, every person who Possesses the qualifications mentioned in article 5 of this Constitution shall, subject to the provisions of any law that may be made by Parliament be a citizen of India provided that he has not voluntarily acquired the citizenship of any foreign State.' "

Mr. President : You drop 'continue to be'.

Shri Jaspat Roy Kapoor : This is a misprint. It will only read as "shall be a citizen of India...." I hope Dr. Ambedkar will give serious consideration to this suggestion and find it acceptable.

The next amendment that stands in my name is No. 13, but in view of the fact that the substance of this amendment is covered by amendment No. 130 which has already been moved by Dr. Ambedkar, I do not propose to move it. I am not moving Nos. 8 and 9 either. Then I pass on to No. 31 which I beg to move:

"That in amendment No. 1 above, in the proposed new article 5-B, the words 'deemed to be' be deleted."

There is another amendment No. 19 in my name as well as in Mr. Sidhva's name but I leave it to be moved by Mr. Sidhva because he is my senior partner in this amendment.

The next amendment which I would like to move is amendment No. 124 which runs thus :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, after the word 'who' a comma and the words 'on account of Civil disturbances or the fear of such disturbances,' be inserted."

There are some other amendments also standing in my name but I do not propose to move anyone of them.

Sir, this article 5 which relates to the definition of citizenship has had rather a chequered history. The Drafting Committee has placed before us for our consideration various drafts from time to time, each draft being supposed to be an improvement on the previous one, but every time that it came before us for scrutiny and consideration, it was found to be defective and not comprehensive enough, and, therefore, it had to be sent back to the Drafting Committee for being recast and improved upon. Even during this Session one amendment after another has been pouring in from the Drafting Committee until we have before us the Draft as has been moved by Dr. Ambedkar yesterday. Let us see whether even this Draft is satisfactory enough. I am afraid even this is not satisfactory and is not comprehensive enough. First of all, we find that it confines itself to defining Citizenship at the date of commencement of this Constitution and makes no provision for the acquisition of the right of citizenship subsequent to that date. Of course under article 5 (c) the right acquired on the citizens even thereafter, but with all that it makes no provision for acquisition of the right of citizenship subsequent to that date. It has been conveniently left over to be dealt with by Parliament. Now, the date of commencement of the Constitution is going to be under the schedule which has been thought of at present as 26th January, 1950. So it means that 26th January 1950 is going to be the deadline by which the right of citizenship should be acquired and no provision has been made for the acquiring of this right subsequent to the midnight of 26th January 1950. I consider this to be rather a very unsatisfactory state of affairs. I can quite appreciate the view that it may not be very easy today to make an exhaustive definition of citizenship. It may not be possible to envisage at this stage as to what possible qualifications should be provided for the acquisition of the right of citizenship, and it should be left to Parliament to make a very comprehensive definition of citizenship; but I see no reason why we should not make an attempt, when it is easy enough - according to me - to provide for acquisition of this right during the period intervening between the date of commencement of this Constitution and the date on which the Parliament may enact any new Law on the subject. Is it not very unsatisfactory that we should make no provision for all those persons who may be born after midnight of 26th January 1950, and should we not make any provision for acquisition of the right by those who may have been domiciled in this country and some time after January 1950 may be completing the period of five years of residence? That seems to be an obvious lacuna. Lacs of persons would continue to be considered as non-citizens of this country between the date of commencement of this Constitution and the date when the new law will be made Parliament, and the brunt of this difficulty will be felt even by several members of this House who have been recently married including even Honourable Ministers who may have children born immediately after 26th January 1950 and who will find themselves in the very unhappy and uncomfortable position of being parents of children who are not citizens of this country. The anomaly of the position becomes more funny when we find this in article 5-B--the relevant portion runs thus :

"He shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution."

I particularly wish to draw attention to the word 'after' which means that whereas article 5-A confines itself to defining citizenship only at the date of commencement of this Constitution, according to 5-B, in respect of persons who are not born or residing here but who have been born in a foreign country or residing there, even on a date subsequent to commencement of this Constitution, if an application for registration is made to our embassy there, they shall be registered as citizens. So obviously persons born in this country are going to be placed at a disadvantage as compared to persons born in a foreign country - of course of Indian parents. It may be said that such persons would not necessarily become automatically citizens because they will have to be registered and it may be said that certain rules may be framed by our Government laying down the conditions under which only they could be registered, or that a subsequent law may be made - a comprehensive law - on the subject which would take note of all these contingencies. According to article 5-B, a citizen of Pakistan whom we are trying to eliminate from our definition of citizenship, if he goes over to a foreign country and presents an application to our embassy, he can be registered as a citizen of India. In this article 5-B the condition that he should not have acquired the right of citizenship of any foreign State which we find in article 5-A does not find place. It may be said that we shall not allow such an anomalous position to stand and we shall make necessary legislation on the subject. True, but then what I find is that this very safeguard which there was originally in the original article 5-B incorporated as follows : "and subject to the provision of any law made by Parliament" is proposed to be deleted. Originally it stood like this : "Notwithstanding anything contained in articles 5 and 5-A of this Constitution and subject to the provisions of any law made by Parliament etc." If the saving clause be there, of course any defect that may have appeared to us in the provisions of 5-B could be removed. Now Mr. T.T. Krishnamachari yesterday moved an amendment which has been very generously and gladly accepted even before it was moved, by Dr. Ambedkar. I do not see with what object Mr. Krishnamachari suggests that these words should be deleted. If his contention be that this is redundant because under article 6 Parliament shall have the right to frame any new law laying down what qualifications there shall be for the right of acquisition of citizenship, I submit.....

Shri T. T. Krishnamachari (Madras : General) : May I point out that if he reads article 6 as amended, he will find the explanation for my amendment.

Shri Jaspat Roy Kapoor : I did rightly anticipate the argument that would be placed before us by Mr. Krishnamachari in reply to my objection, but if article 6 as amended covers such case and makes these words redundant may I ask where is the necessity for these very words being inserted in article 5-C ? Article 5-C says "Every person who is a citizen of India under any of the foregoing Provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen." We have these words in article 5C. But in article 5B these words, which were originally there, are now proposed to be dropped. If they are redundant and are covered by the newly drafted article 6, they must go from both these articles. If they are necessary in article 5C, they are still more necessary in article 5B.

I submit that I consider that it is necessary to retain these words in article 5B. I do not think it will be open to Parliament to enact any law by virtue of the powers

conferred on it by article 6, which is in contravention of the provisions of article 5B. 5B is a definite article laying down the qualifications for citizenship in respect of persons mentioned therein. A definite article conferring the right of citizenship under the Constitution cannot, I think, be tampered with by any subsequent law made by Parliament. Be that as it may, to avoid the possibility of any ambiguity it is necessary either to have these words both in article 5B and 5C or not to have them in any one of them. Having them only in article 5C may lead to the presumption that 5C only is subject to the provisions of any subsequent law on the subject and article 5B is not subject to any such subsequent law.

My submission with regard to the point that I had raised originally is that we should amend article 5 in such a manner as to cover the cases also of those persons who are newly born of Indian parents on Indian soil after the 26th January 1950. I see absolutely no difficulty in my suggestion being immediately accepted. Even if it is accepted article 5 would not become an absolutely permanent definition of citizenship : that can be amended, varied or altered under article 6, as has just been pointed out by Mr. T. T. Krishnamachari. I only want that the lacuna that is there must be filled in. Let it not be said that the period immediately following auspicious day of 26th January 1950 was so inauspicious that persons born in this country after that date and before the enactment of a new law was so unlucky that children born therein were not citizens of this land by birth. I therefore, suggest very seriously and respectfully that article 5 be amended in the way I have suggested. This can be done merely by incorporating the two words "and thereafter" after the words "At the date of commencement of this Constitution".

The other point that I would like to refer to is regarding article 5A. This article relates to those persons who have migrated to India after the partition. They are to be "deemed to be citizens of India." I particularly object to the retention in this article of the words "deemed to be". The article reads like this :

"Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution."

I do not know with what particular object these words "deemed to be" have been incorporated herein.

This article relates to the acquisition of the right of citizenship by persons who have migrated into India. I do not see any reason why they should not be considered after having migrated into India as citizens of India as of rights, and why it should be suggested that we are conferring on them this right by way of grace, as it were. It seems to me that it is likely to be felt very seriously and bitterly by those of our brethren who took all the trouble and who underwent all that misery and agony by migrating from Pakistan to this dear and sacred land of theirs. All the while that they were on their way to this land, they were thinking of this beloved country of theirs, pining and praying to reach our borders, and immediately on reaching those borders, with a great sense of relief they cried out "Jai Hind", a cry which touched every one of us. They had such tremendous loyalty and affection for this country. They were so eager to rush to this country, to offer their loyalty to it, and yet we say that we are conferring on them this right of citizenship more by way of grace than by way of right. I do not see any reason for it, Sir. On the contrary, I see very great reason that these words must be deleted and satisfaction given to our refugee brethren. In matters like this, it is always best to act gracefully and go give a psychological satisfaction to our refugee brethren. I would, therefore, respectfully and earnestly suggest that these words might be

deleted, for nothing is to be lost by the deletion of these words, and much is to be gained.

Similarly, Sir, in article 5-B these words 'deemed to be' may be deleted, though it is more necessary to delete these words in article 5-A than in article 5-B.

Then I turn to amendment No. 124 which I have already read out. It says that in the proposed new article 5A, after the word "who" a comma and, the words 'on account of civil disturbances or the fear of such disturbances,' be inserted. So after the incorporation of these words, article 5A would read thus :

"Notwithstanding anything contained in article 5 of this Constitution, a person who, on account of civil disturbances or fear of such disturbances, has migrated to the territory of India....."

Now, Sir, the object of this amendment of mine is to bring it in line with certain other legislation already in force : I mean the legislation relating to the evacuee property. We have, Sir, not only at the Centre but also in several of the province in the country - almost every other province, excepting West Bengal, Assam and probably Madras too - an Evacuee Property Ordinance in force. According to that Ordinance, an evacuee has been defined as one who has left a territory because of civil disturbances or because of fear of such disturbances. It appears to me very rational and reasonable, Sir, that in a provision like article 5A, we must say what are the particular reasons which are guiding us for making a provision like this. We must make it known definitely here that it was not our intention to confer the right of citizenship on anybody who wanted to migrate to this country; but we want to confer this right on such persons because of certain reasons, the particular reason being that such persons found it difficult to stay in the place of their original domicile. We must lay it down definitely what are the reasons which are guiding us in making a provision as is contained in article 5A. I therefore think that the inclusion of the words which I have suggested is very necessary to make our intention very clear.

Then, Sir, I have one thing more to say with regard to another amendment which has been moved by Shri T.T. Krishnamachari - that is amendment No. 131. This amendment stands in the name only of Shri T.T. Krishnamachari. I do not know what particular reason there was for Dr. Ambedkar to dissociate himself from this amendment, though of course, while moving his amendment as a whole, he has accepted it. I do not know why he should have accepted it, when originally he did not like the idea of himself being associated with it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : But he has not even moved it! Oh, that proviso-yes, I have accepted it.

Shri T. T. Krishnamachari : It is not in Dr. Ambedkar's name but in Shri Gopalaswami Ayyangar's and mine.

Shri Jaspal Roy Kapoor : That is exactly what I was submitting. Therefore, I was perfectly correct. I am glad to find that it has come to Dr. Ambedkar as a surprise. I have said that this amendment has been accepted by him. He was under the impression that it had not been moved at all, and if he has accepted it in an unguarded moment, or under any misapprehension, I hope he will immediately correct himself and make it clear to us that it is not his intention to accept this amendment.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and tell him that he knows very well why that amendment has been moved.

Shri Jaspat Roy Kapoor : Yes, I know very well why this amendment has been moved : I know also very well why this amendment is a very obnoxious one, and why it should not be accepted. I say it is obnoxious even to this extent that Dr. Ambedkar did not originally consider it necessary and advisable and proper to associate, himself with this amendment.

Why is it, Sir, that I consider it obnoxious? It says that those persons who migrated from India to Pakistan if, after 19th July 1948 they came back to India after obtaining a valid permit from our Embassy or High Commissioner, it should be open to them to get themselves registered as citizens of this country. It is a serious matter of principle. Once a person has migrated to Pakistan and transferred his loyalty from India to Pakistan, his migration is complete. He has definitely made up his mind at that time to kick this country and let it go to its own fate, and he went away to the newly created Pakistan, where he would put in his best efforts to make it a free progressive and prosperous state. We have no grudge against them...

Shri Brajeshwar Prasad : (Bihar : General): May I ask my honourable Friend whether it is true that all those persons who fled over to Pakistan did so with the intention of permanently settling down there and owing allegiance to that State? Is it not a fact that they fled in panic ?

Shri Jaspat Roy Kapoor : My honourable Friend Mr. Brajeshwar Prasad even today, on the 11th August 1949, doubts as to what was really the intention of those persons who migrated to Pakistan. I do not want to refer to this unpleasant subject, because the sooner we forget the bitterness of the past the better. But do we not know that Muslim Leaguers wanted division of the country and exchange of population, and that the number of persons belonging to the Muslim League was tremendously large? To our misfortune, only a handful of nationalist Muslims were opposed to the idea of Pakistan. The vast majority of the Muslims and most certainly those of them who went away to Pakistan immediately after Partition had certainly the intention of permanently residing in Pakistan. May be that some of them or quite a good number of them went to Pakistan at that particular time because of the disturbances here: but has my honourable Friend any doubt that even if there were no disturbances, many of them, almost all of them, would have gone away to Pakistan, because they were themselves demanding that there should be a transfer of population ?..... (Interruption by Shri Brajeshwar Prasad.)

Mr. President : The honourable Member is entitled to his own views and it is no use cross-examining any Member across the floor of the House. If Mr. Brajeshwar Prasad has his views, let him have them and let Mr. Kapoor express his own views.

Shri Jaspat Roy Kapoor : I know that my honourable Friend Mr. Brajeshwar Prasad does not agree with any sensible view or proposition that is advanced in this House, and it is no surprise to me that he is not agreeing with me on this occasion as well. What I was submitting is that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was therefore complete and absolute and, therefore, the right of citizenship which they had before their migration is eliminated altogether. There have been cases of a large number of government employees, both in the higher and lower posts and particularly in the railways, who had opted of their own free will for Pakistan, even before Partition had taken place; and quite a large

number of them, particularly railway employees, after going over to Pakistan came back to India finding that they had no scope for a decent existence in Pakistan, after obtaining valid permits. Could it be said in their case, as Mr. Brajeshwar Prasad is contending, that they had left this territory because of fear of disturbances ? They had definitely said even before there was any sign of disturbance that they would like to go and settle down permanently in Pakistan and serve the Pakistan Government. There should, therefore, be no doubt in the mind of anyone of us that such persons definitely went away with the idea of settling there permanently. Now if they want to come back to India to settle down here permanently, we may welcome them as we would welcome any other foreigner. Once they became, foreigners to our land they must be treated on the same footing as any other foreigner. If any permit is given to them to come over and settle down permanently, it only means that we are showing consideration to them and telling them. "You can come back again and settle permanently here if you like; but please do not think it is for the reason that you kicked this country once. We do not wish to put a premium on this conduct and grant any concession therefore. But we are prepared to give you the same facility for reacquiring the right of citizenship of India as we are prepared to give to any foreigner." It means let them come back by permit and settle here for five years, and thereafter perhaps they may be permitted to acquire the right of citizenship as any other foreigner may be permitted to any subsequent law made by Parliament. Therefore it is a matter of principle and we should not throw away this principle for any reason, without any valid reason.

Also it has certain financial implications which we should not forget to realise at this stage. The question will arise as to whether in regard to the property which such persons had left at the time of migration they will be entitled to get them back along with their citizenship after they have been promulgated an attempt has been made to vest in the Custodian of Evacuee Property the right of management of all the property which has been left over by evacuees. Now such persons, even though they have come back after the 19th July 1949 under a valid permit continue to be evacuees under the definition of the various Ordinances. There will be an anomalous position then. While on the one hand we confer on them the right of citizenship, the property which they had left behind at the time of migration will continue to be evacuee property. You will perhaps treat the question with fairness and generosity, and I agree that it must be treated with fairness and generosity, because every great nation must always adopt that attitude. With that attitude of fairness and generosity, I am afraid it will be well nigh impossible for you to say to them that "Though we adopt you as citizens of this country, yet we would treat your property." That may not be possible and, therefore, property worth crores of rupees will be going out of your hands. I need not elaborate this point because the implications of this are very clear to every one of us and more particularly to those who are responsible for sponsoring this amendment.

I would only say one word. While it is good to be generous, generosity loses much of its virtue when it is at the cost of others, because this generosity will be at the cost of nobody else but ultimately perhaps at the cost of our refugee brethren. Eventually it may or may not be so we do not know, but we will very much regret it, if that becomes the position. It is the refugees who are going to benefit from all such property and if we are going to make a free gift of all this property to those who migrated but have come back it is the refugees who are going to suffer and none else. I would, therefore, beg of Mr. T. T. Krishnamachari and also Mr. Gopalaswami Ayyangar not to press this amendment and let this article 5A remain as it is in the draft without the proviso.

I have done, Sir. I will only repeat the appeal I have already made, that this particular amendment at least of Shri T. T. Krishnamachari should not be accepted.

Mr. President : Professor Shah may now move amendment No. 6 (List I - Third Week).

Prof. K. T. Shah : (Bihar : General): Sir, I have some amendments in the Printed List. Vol. I which have not been covered by the revised Draft. I would like to move them with your permission.

Mr. President : I had one such amendment of yours in mind when I made certain remarks in the beginning.

Prof. K. T. Shah : That is a new article. That comes later. I am speaking just now of amendments 203 and 208 which relate to the restriction of parents on the paternal side. That has not been moved.

Mr. President : You may move amendment No. 203.

Prof. K. T. Shah : With your permission, Sir, I would move all my amendments and then speak on them collectively.

The first amendment I would like to move is :

"That in clause (a) of article 5, after the words 'grand-parents' the words 'on the paternal side' be added."

The numbering of the clauses will have to be altered. As the same idea is repeated in amendment No. 208 I am repeating it. The next amendment of mine in the Printed List is No. 227. As it is included in the new amendment I have given notice of, I do not read it just now. My next amendment is No. 231. As it relates to a new article, I do not propose also to read it just now. Then I move :

"That in amendment No. 1 above, in the proposed article 5 -

(i) after the figure '5' the brackets and figure '(1)' be inserted;

(ii) before the Explanation, the following proviso be added:-

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country.';

(iii) after the Explanation, the following new clause be added:-

'(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India.' "

I also move:

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added :-

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship.' "

Then there is my amendment No. 152 in today's list (List V of Third Week).

Mr. President : But, then, are you not moving amendment No. 20, (List I of Third Week) ?

Prof. K. T. Shah : I am moving it.

I move:

"That in amendment No. 1 above, in the proposed new articles 5-A and 5-B for the word "Dominion", wherever it occurs, the word 'Republic' be substituted."

The next amendment that I move is No. 152 in List V of Third Week. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (i) of clause (b) of the proposed new article 5-A, but before the word 'and', the following proviso be added:-

'Provided that any person who has so migrated to the areas now included in Pakistan but has returned from that area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there.' "

There are all the amendments which I move in this connection at the present time. While commending these amendments to the House, may I offer my sincere congratulations to the draftsman for the great erudition and mastery of a very complicated subject that he has shown and also, in the midst of very serious difficulties, tried to keep a balanced judgment on an admittedly very difficult subject where feelings run high ? It is not customary for me to throw many bouquets at the learned draftsman of this Constitution. I therefore trust that as I do such a thing so rarely, let me for once offer this bouquet of roses which I trust he will appreciate, even though there are some thorns 'in the bouquet.

Sir, I have been obliged to move these amendments, spread over a number of items, and dealing with a number of aspects, because I think a number of vital principles are involved. Would you permit me to simplify the entire series of amendment by formulating in general terms by idea why they have become necessary in the face of this Draft, which I consider to be of importance, and why, if they are included, the Draft would be very much improved in my opinion ?

Sir, to put the matter briefly and succinctly citizenship of a State is had or acquired in a variety of ways. Therefore the first proposition that may be laid down is that anyone born in a country is automatically a citizen of that country, unless by his own act, when he attains maturity, he or she renounces that privilege. This is a simple proposition to which there ought to be no exception. It goes further and

makes citizenship not only a birthright, but also an inheritance. That is to say any one whose father or mother according to my amendment and according to this Draft whose grand-parents, or whose grandfathers on the paternal side according to my amendment were born in this country, would also acquire automatically the privilege of being a citizen of this country, unless it is specifically renounced by any act of the person concerned.

Sir, it has been said by previous speakers, and I would like to endorse it, that the privilege of citizenship of India should not be regarded as something very commonplace affair, cheap and easy. It is, I submit - and it promises to be still more, a great privilege, of which not only those of us who are now citizens may be proud, but even those who may hereafter become citizens of India should also be proud. It was the proud privilege in the days of the Roman Republic for any Roman citizen simply because of that citizenship to regard himself as equal to any King. The last word in status and importance was said when he proudly asserted : "*civis Romanum sum*"=I am a Roman citizen". I hope the time is coming when the same proud boast may justly be made by Indians, when the citizenship of India will not be merely regarded as a burden of our 'nativity'-for we were used to be called 'natives' in the dead and buried past - but it would be regarded as something to which the rest of the world will look up with respect.

Holding this opinion, Sir, as I do regarding the great privilege of being a citizen of India, I entirely agree with those who think that we should not make it too cheap and easy. Nor should we be unduly niggardly about any reasonable demand or reasonable claim by birth or inheritance to that citizenship.

Sir, I think now that the subject of citizenship has become complicated, we would be landing ourselves into great difficulties if we continue this right of inheritance almost *ad infinitum*. For, though you take it only up to the grand-parents on both sides, - that is to say, the inheritance by descent from the mother and father of the mother and father of the person claiming citizenship, it is a very difficult matter to prove and establish. It has been said, Sir, that whereas maternity is a fact, paternity is an assumption. It is difficult to prove paternity beyond the shadow of a doubt, though there may be unimpeachable evidence in support of maternity. Nevertheless, for centuries, if not millenia past, we have been accustomed to reckon descent only on the paternal side. And hence my amendments. Under these circumstances, and especially in view of our country's 'very poor registration system, where the, evidence of birth and death is not easy to obtain, I am afraid that the extension in this manner to inheritance of citizenship is bound to create difficulties especially in view of the circumstances that led to the partition of this country, and the aftermath of terror and migration that has followed that partition. I would, therefore, willingly accept for my part the suggestion of Dr. Deshmukh, which would restrict the privilege of citizenship by birth only to the second degree, which can be more easily established or proved. If you go further, if you want to be more liberal and generous, you may take it up to the third generation. But there I would stop and try to keep the right of inheritance of citizenship only on the paternal side.

I say this with no desire to suggest, even by implication, that I have any lack of belief in the equality of men and women so far as citizenship rights are concerned. I say it because of the many complexities and difficulties involved in this tracing of inheritance from the maternal side, not the least of which is the problem of proof. I would, therefore, suggest, either and preferably, that the definition suggested in this regard by Dr. Ambedkar be accepted in preference to my own suggestion; or

at any rate, if you wish to be generous in this regard, you might keep it to the male grand-parent of the person claiming to be citizen by inheritance.

Sir, inheritance is a thing that can be acquired; and it can also be renounced; and, therefore, in the case of those who have voluntarily or, as some honourable Member has suggested, in panic, gone out of this country, and have indicated by every act in their power that they would have nothing to do with this country, that they belong to a different nation, that they are difference in race, language, culture and religion, or whatever the reason that inspired them in, we would be justified in presuming that they have renounced their birthright. They having renounced their birthright, we are justified in saying that they would not be entitled to the right of inheritance.

If they want to return and desire to become once again the citizens of India, in such cases, also, I hope the House will agree with me that we would be entitled to see to it that there would be no Quislings amidst us. It is but fair, therefore, that such persons be required to produce sufficient evidence documentary or otherwise, not only to their right by descent, but also to show their intention to permanently reside in this country, and be its loyal citizens. For that purpose, Sir, the amendment that I have suggested would, I think, be much more adequate, much more appropriate, and much more necessary than the Draft before us. I, therefore, commend that item to the honourable Draftsman.

Coming next, Sir, to the case of those who happen to be away, who by settlement in other lands for business connection or by a formal act of acquisition of another citizenship, under the Naturalisation laws of that country, become citizens of that country, we would be right in providing that, if they desire to acquire the citizenship of India, their path should be simplified. Subject however to the condition that I have already indicated, *viz.*, that there must be some concrete evidence that they really intend to reside in that country, be part and parcel of that country, would share all the duties and obligations of that country's citizenship, and would not be traitors to their country of adoptions.

If citizenship is given as a matter of course to those who by settlement, by business connection, or otherwise, claim the right of being citizens of this country, and demand all the advantages and accrue from it, I think we must have reasonable evidence, we must demand reasonable proof that they intend permanently to live here, and be part of this land, loyal and devoted to her; and not merely for taking advantage of our generosity or liberalism in this regard.

I am thinking, Sir, in this connection much more of those foreign capitalists or businessmen who had been with us, and who had claimed in the past that there should be no discrimination against them. The Government of India Act, 1935, is disgraced by a whole chapter of many discriminatory provisions, - the discrimination being always against Indians and in favour of those outsiders. With that experience before us, and with the possible development of our future fiscal policy in such a manner that Indian citizenship in business, in industry or any other enterprise may receive special protection, may receive, special benefit, we must take good care against foreign capitalists who might come and settle here, merely to enjoy those benefits of our fiscal or industrial policy, without their heart being in this country. I, therefore, suggest that whether in the Constitution, or in any legislation that Parliament may make in this regard, we should see to it that such citizens by self-interest furnish evidence, sufficient evidence of their intention to make India their permanent home, and not merely being mere birds of passage, exploiting the

country, and only taking advantage of any fiscal legislation or financial advantage, and then quitting the country after their purpose is served.

Sir, here is a point, which, may I say with all respect, does not seem to me to be sufficiently borne in mind by the Drafting Committee; and perhaps the amendment of the kind that I have suggested, or some other amendment in that sense may be necessary to cover that position. I frankly confess, with the views that have been expressed from the highest quarters about the need for foreign capital, and about the necessity for offering all kinds of advantageous terms to these foreign investors, we are not going to end exploitation of this country, if we permit the citizenship of India; and its attendant privileges to be lightly acquired. Unless the Constitution contains some provisions which entitled Parliament to make discrimination, - I have no hesitation in using that word, - so that indigenous talent and enterprise will be sufficiently protected and safeguarded against their foreign competitors, unless there is some such provision and authority in the Constitution itself, Parliament itself may be unable to protect adequately, our own enterprise as against those people whose only purpose in acquiring Indian citizenship is to take advantage of our fiscal policy, or any other cognate: advantage, and not make any adequate return to the country that gives them that advantage. I, therefore, trust, Sir, that my reasoning in this regard will at least commend itself to the Honourable the Drafting Committee Chairman even if the actual wording may not, I would trust to his erudition, to his understanding, to his patriotism to see to it that some such provision as I have asked for would be incorporated in the Constitution in any form which he thinks most appropriate. So far as the actual technical drafting is concerned, I have not the slightest hesitation in admitting that the Chairman of the Drafting Committee is a far greater master than I could ever pretend to be; and that, therefore, I would leave it entirely to him, if he accepts the reasoning I have put forward to put up such an amendment as he may think necessary in his own words.

I now come, Sir, to the next amendment, I mean, that which relates to those countries, our near neighbours in Asia, where large numbers of Indians have settled; and where, under the new upsurge of local nationalism, their treatment is not all that can be desired. There is a feeling that in Burma, in Ceylon, or in Malaya, for instance, our *citizens* are not meeting with all the equality of treatment of reciprocity that we may desire. Hence it is that by two of the amendments in amendment No. 6, I am trying to suggest that wherever the local legislation permits an Indian to acquire all the rights and advantages of citizenship, without prejudice to his own nationality by birth, we should give the same treatment. We should also preserve the nationality of that person of Indian birth who has settled, and who owes allegiance to the Government of another country, though that country's legislation permits him to do so.

Permit me to add, Sir, that in this demand it is not that I am becoming self contradictory, because just a moment before I said that a person who has settled in India should be guarded against as much as we can by our Constitution, lest the privilege of such acquired citizenship be used to our prejudice. I am not debarred from making the suggestion. I am now putting forward. I repeat, I am not becoming inconsistent, because, according to the information I have received, there are 8 lakhs of Indians in the Federated Malay States. Under the new Constitution of the Federated Malay States, they permit such Indians settled there, to acquire the fullest rights of local citizenship, without losing their Indian nationality by birth. On the other hand, in Ceylon and Burma, according to the information I have, the position of Indians is very much more invidious. Burma for example, I have been informed by people who should know provides that an Indian can acquire Burmese citizenship according to certain formalities prescribed by the

Burmese, legislation. But before a certificate of naturalisation can be delivered to him, he will have to make, an express declaration that he renounces his Indian citizenship. Speaking for myself, I would say that this is not fair. But even if it be taken as fair dealing with good neighbours we can make an exception in the case of those Indian citizens, who leave to live their lives there, and who cannot remain Indians under the Municipal law, if they wish to remain in that country where their own life work lies. In that case, I would make an exception and not insist on Indian nationality being retained by one who has had to renounce it. But there is another case, that of Ceylon. Again I am speaking from the information that I have gathered--in Ceylon the local legislation for acquiring Ceylonese citizenship automatically denies or destroys the citizenship of the previous origin by birth or otherwise if once a person acquires by naturalization the citizenship of Ceylon. The obligations of citizenship are plenty,--and none would be more aware of them than I am of such obligations,--and would require allegiance to one's country of adoption, without however there being any necessity automatically to forego the nationality by birth. That I think is asking a little too much. But even so, I recognise that Ceylon is an independent dominion and is entitled, to make its own laws, On that basis, we must allow those Indians, who are settled there, to follow the local legislation without any objection on our side as to their retaining their nationality by birth, even after acquiring Sinhalese citizenship. We need not insist that they shall continue to remain Indian nationals.

The case that I now come to is the reverse of these, and provokes much more strong sentiment than these three other cases, which are or were also British Dominions or Protectorates, until recently. I am now thinking of those other Dominions, countries like Australia, New Zealand, or Africa, where Indian do not receive equal treatment. I need not weary this House with a tale of woe of Indians in Africa. They are all fresh to us. We are all full of resentment against such legislation as is being perpetrated now in that country. With that our experience, I see no reason why we should not reserve in our fundamental Constitution express power that Parliament shall not grant rights of equal citizenship, or equal treatment to those who deny our nationals,--law abiding, peaceful, enterprising, carrying on business and adding to the prosperity of that country,--the same treatment that they accord to other classes within their jurisdiction.

Africa is perhaps the most glaring, the most poignant case of invidious discrimination against Indians; and as such I should say, it is not enough to tell me as this Draft says, that Parliament is free to pass legislation for regulating the acquisition or termination of citizenship; and that under that power such cases will be dealt with. I would add a provision, making it incumbent upon Parliament also not to grant equal treatment to the nationals of those countries who discriminate in this manner against Indians settled there, working there for all their lives, and adding by their labour, by their enterprise, by their skill, to the wealth of that country, remaining peaceful, loyal, law-abiding citizens of that country.

Sir, it is an unfortunate fact that, for whatever reasons, we are still members of the so-called Commonwealth of Nations dominated by Britain our former exploiter. In the Commonwealth of Nations, even though theoretically we are supposed to be equal members, equality is shown more in exclusiveness by some, and maintaining their superiority of the old imperialist days by others, than in the real spirit of true brotherhood that might make that Commonwealth more honest and attractive. I for one have never been an admirer of the Commonwealth. Nor have I been converted by the recent utterances of high authority and the latest developments.

Accepting that as a fact, we must nevertheless preserve our right, as we have done in other cases, of retaliation, may I use the word, against those Dominions,

against those countries, which do not give equal rights to our people. Even in the case of Australia, while it may not be so clear, so pointed, so invidious as in the case of South Africa, there is the policy of "White Australia" which is being proclaimed from the house-tops, and which is spoken of with pride by the present Prime Minister of that country; he has even asserted that the highest authorities in this country have also agreed to his ideal. I do not know how far that is true. Whether it is so or not, with this insistence of the Policy of "White Australia", I do not see why we cannot discriminate, in our own Constitution, against these people, who without regard for good neighbourliness, without regard to the many proofs of friendliness that we have given in the past and we, are still giving, would insist upon their narrow, restricted, geographical nationalism. That does not suit a new country of that type, which has yet to develop all its resources, and where its own population is hardly adequate to the climatic and other conditions prevailing in that country. It does not become such a country to say that they would insist on the superiority of the heaven-born white race, and that that race alone could settle and the citizens there, and all others, whatever their claim may be have no chance of becoming full citizens.

This applies even to that country which now claims to be the leader of all civilised, progressive, western nations, I mean America. The United States of America is very rich in high professions about equality of human rights. But when it comes to implementation of those rights in their own land, I am afraid, the U.S.A. has not given in the past, and is not giving today, any concrete indication that there is a complete unanimity between the tongue and the heart. In fact there is a large gulf between the two. In the United States, until recently, Indians could not acquire full citizenship rights. Even today, so far as my memory goes,--I am open to correction by the superior knowledge of the Drafting Committee,--Only about one hundred Indians every year can immigrate into that country and become eligible for full citizenship of that country a country which professes to have advanced views on liberalism, a country which speaks of equality of human rights, a country which professes to be the pioneer and promoter of the famous four freedoms in the world, but which every day violates the 'freedom'. That is not quite compatible with their own professions of equality all round in the world, and to whom anybody who wants dollars should go with bended knees, with the beggar's bowl, ready to submit to any condition that the masters of the mighty Dollar are prepared to lay down.

This country need not be very much afraid of them, because we may have industries to develop and our resources are undeveloped. We are told by some that we have not our own capital resources adequate to do so. I am not one of those who believe that. We need not show any apprehension; we need not be so hesitant about ourselves that we should not lay down, quite clearly and categorically, that those who do not treat us equally shall not be treated equally in this country. Whatever may be the consequences, I am not afraid. I do not see why this country, though only two years old as an independent sovereign State, should show, in its Constitution in the fundamental law of its being and working, that it is going to be afraid of any people lest that people be displeased, and lest they should regard us as out-castes. If they do so, it will be to their own prejudice, and it will not be to our loss. The sooner the day comes when we learn by bitter experience to stand on our own legs, and fight with our own arms, the better for us. So long as we want to be protected, supported, assisted from outside, we shall not be able to call our soul our own.

Hence it is that without any ambiguity, without any circumlocution, I would lay down this point in the constitution itself regarding citizenship Whatever that may be, hereafter Parliament shall not be free to accord equal rights to those who deny

such equal treatment to us. We are prepared to accord full reciprocity to all, be they Pakistan, America, Australia, Africa or Britain; we are prepared to grant equality, if equality is given to us. We are not prepared to take merely the word of these great white gentlemen if their acts do not correspond to their words. We are not prepared to accept merely their verbal professions of equality, like the spider's proverbial saying to the fly "come into my parlour." I do not compare ourselves to a fly-but we need not go to be devoured in a Battering manner by the spider, be the web in New York, or London or Brisbane, or Canberra. It does not matter two hoots where they are, and what they are, so long as their words do not correspond to their deeds. We cannot take our stand too strongly and guard ourselves against being humbugged against being deceived betrayed and sold, too effectively. I, therefore, suggest that Parliament itself should be restricted by the Constitution against granting, as we have unfortunately granted and agreed to grant to the members of the Commonwealth, equal treatment to those that do not give us the same treatment.

We have recently undertaken many international obligations. I call to mind only one of these just now, that of the so-called Havana Agreement or the Havana Trade Agreement,--I forget the exact words--one is so bewildered by this plague of initials that one cannot remember the original Christian name of these organisations. I take it that the House is aware that we are undertaking these international obligations. But these international obligations should not act, and I hope they are not acting, against us only. When it did not suit Britain for example to act up to the spirit of the Havana Charter, she was quite free to and has entered into trade agreements with Argentina, which I am told has seriously displeased the New York money market. That may be so, but Britain has not hesitated to seek her own interest. If an occasion like this should arise, we also ought to have this power with us to deal with the people and to deal with these circumstances when they arise without fear or favour. So, I say that by the amendments I have suggested, - I repeat I am not insisting upon the letter of the amendments - by the spirit of the suggestion, we would be able to guard against any such mischance. I hope nobody will consider me to be a narrow nationalist, though I am not ashamed to be called so. But this is essential to all those who would like to stand on their own legs, who would like to fight with their own arms, who would not care for any men on earth as to what they think or what they feel, provided we believe that we are right. On a famous occasion, when the timorous Generals of the civil war came to President Lincoln on the eve of a great battle and said, "We hope, Sir, that God is with us," President Lincoln replied, "It does not matter if God is with us"; it matters a great deal if we are with God." I am quite sure that we are with God and I am perfectly certain that if we accept the spirit of the amendments that I am suggesting, we shall have nothing to regret.

Shri Krishna Chandra Sharma (United Provinces : General) : Sir, I beg to move.

"That in amendment No. 1 above, at the end of clause (c) of the proposed article 5, the words 'and is subject to the jurisdiction thereof' be inserted."

The meaning is this that without these words that provision will come in conflict with international law, *i.e.*, the children of the embassy station here are not subject to the law of this land. For instance, you cannot haul them for conscription and it is an elementary law that a man would not enjoy the right of citizenship unless he takes up the obligation thereof. Therefore, you cannot bestow citizenship on a person from whom you cannot expect or you cannot call him to take up the obligation and therefore it is just to be in consistency with international practice

and would bring the provisions in accord with the international law. This is necessary and I hope the Honourable Dr. Ambedkar will accept this.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"(a) That in amendment No. 1 above -

'(i) in the proposed article 5 -

for the words 'has not voluntarily acquired the citizenship' the words 'is not already the citizens' be substituted;

(ii) in the Explanation for the word 'has' the word 'had' be substituted; the word 'now' be deleted; and the following be added at the end :-

'at the commencement of this Constitution.'

(b) in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'included in Pakistan at the commencement of this Constitution' be substituted.' "

I have another amendment in common with Sardar Bhopinder Singh Man and I leave it to the Sardar Sahib to move it.

Sir, this is one of the most difficult articles in our Constitution, and as the speeches so far made have shown, and even Dr. Ambedkar has himself confessed that though this Draft has been put forward after the most careful consideration, still friends have come forward to point out its defects. I want to say, first of all, that my Friend Dr. Deshmukh has moved a very important amendment to the first clause of article 5. His contention is that we are making this 'Citizenship of India' very cheap whereas it is a very difficult thing to acquire in other countries. I concur fully with him and think that the article as it stands needs to be altered in some form. Let us see what would happen otherwise. The article says :

"At the date of commencement of the Constitution every person who has his domicile in the territory of India and was born in the territory of India or either of whose parents were born in the territory of India shall be a citizen".

This clause will give citizenship to a class of persons to whom probably we would not like to give it. Mr. Amery, was also born in India in my District of Gorakhpur where his father was a Forest Conservator and his son John Amery will get our citizenship if he only stays here for some time before 26th January 1950, and we shall not be entitled to stop him from acquiring that. In clause (c), five years residence is sufficient to give citizenship to anybody. I think we are making our citizenship very cheap. We have said 'if he has not voluntarily acquired the citizenship of any Foreign State'. I think it should be 'unless he is already a Citizen of any Foreign State'. This clause has to be amended accordingly. Dr. Deshmukh suggested 'that he should be born of Indian parents'. Now 'Indian parents' will have to be defined because we are defining 'Indian' in this clause and I suggest that by Indian should be meant 'whosoever may be called a citizen of India under the 1935 Act, and if a man is born of such parents, he shall certainly be called a citizen of India.' Dr. Deshmukh's amendment is quite correct, for the Hindus and Sikhs have no other home but India and I do not see how we can include everyone in this category unless we say it bluntly in this form. We should not be ashamed in saying

that every person who is a Hindu or a Sikh by religion and is not a citizen of another State shall be entitled to citizenship of India. That will cover every class whom we want to cover and will be comprehensive. The phrase 'Secular' should not frighten us in saying what is a fact and reality must be faced. I therefore think that Dr. Deshmukh has given a very good suggestion. The present Draft is too wide and gives citizenship to almost everybody. In fact some friends from Nepal met me and asked me whether the Nepalese living in this country shall be called citizens of India and I was really at a loss to give an answer. But clause (c) gives an answer. If they have been here for five years, they will be citizens. Dr. Deshmukh's amendment would give them citizenship here if they wanted. So, this article needs to be amended. We must not make our citizenship very cheap; but for those who owe allegiance to this State, whosoever they may be, they must be allowed to have the citizenship of India and we must say so in our Constitution. The word "voluntarily" should go. Anybody who has acquired the citizenship of any foreign State should not be entitled to citizenship of India. If you say "voluntarily acquired" he may say 'I did not voluntarily acquire it' that it was something involuntary and all that sort of thing. I therefore think that my amendment to this article should be accepted.

In regard to article 5-A I agree with Mr. Jaspat Roy Kapoor that the words "deemed to be" should not be there. Those who have come to India from Pakistan are citizens of India. Why say "deemed to be" ? These words do not add any luster to the article. We should give dignity to our friends who have come over here. They are citizens of India and there is no question of their being "deemed to be" citizens of India.

Then the words "now included in Pakistan" are ambiguous--particularly the word 'now'. This Constitution is made for a long time to come. Whenever it is read, the words "now in Pakistan" will not convey the proper meaning, as the word 'now' will have changing meanings. For instance, today some areas are in Pakistan, tomorrow they may not be there. Or, today some areas are not in Pakistan, but later on they may be acquired by it. Then it will mean that everybody who is a citizen of Pakistan at that time shall, if he had migrated, be a citizen of India. I therefore suggest that instead of saying, "now in Pakistan" we might say "in Pakistan at the commencement of this Constitution". We must limit what Pakistan means. As I said, "now" will be a word with a changing meaning according to the area of Pakistan. I therefore suggest that the word "now" should be deleted and the words "at the commencement of the Constitution" be added at the end of the Explanation. This is my amendment. I hope Dr. Ambedkar will carefully see whether the words "now in Pakistan" may not be differently interpreted at a later period of time.

In my amendment No. 163 of List VI, which my Friend Sardar Bhopinder Singh Man will move, I have desired the deletion of the proposed proviso to the proposed new article 5-AA. My friend Mr. Jaspat Roy Kapoor was very frank in giving his opinion in this respect. Apart from his reasons I will say one thing. This will allow the executive authority to give anybody a permit and he shall become a citizen of India, so that it will be something changing and it may have repercussions which we do not like. We must definitely say what we have said in clauses 5-A and 5-AA, that person who has migrated from India will be treated as a foreigner and when he comes back he will have to acquire citizenship by residence of five years and so on. I do not think the proviso is necessary and I therefore think amendment No. 163 seeking to delete the proviso should be accepted. I would request the Honourable Mr. Gopalaswami Ayyangar and Mr. T. T. Krishnamachari to withdraw

the amendment which they have moved, or the House should reject it. This proviso should not nullify what is contained in the other portions of the article.

In clause 5-B, my Friend Mr. Jaspat Roy Kapoor suggested that the omission of the words subject to the provisions of any law that may be made by Parliament was incorrect and Mr. T. T. Krishnamachari pointed out that as article 6 is there it is not necessary. I do not agree with Mr. T. T. Krishnamachari, because it will again become a question of interpretation. I do not want it to be a matter of litigation. Parliament must have full authority to put limitations on the rights of diplomatic and consular representatives to enroll men as citizens of India. Otherwise it will be very easy for anybody to acquire citizenship of India. I think these words should remain in this very article 5B. Article 6 is of course an overall clause, but unless the thing is mentioned in the other articles also, Parliament's power will be limited. Article 5B is absolute and therefore it should not be limited by the omission of these words. These words are not superfluous there. The words were there in the original Draft and I do not know why they were omitted. They should remain there so that the intention may be clearer than what it is.

Our learned Professor Shah has just now told us how keenly we feel the discrimination against Indians in other countries. In amendment No. 7 he says that "Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship". I think our self-respect demands that this proviso should be there. Otherwise it is hopeless that when we are discriminated against by any country, still to the nationals of such country when they come here we accord equal rights of citizenship. I personally feel, and the people also feel, that if they kick us they shall also be kicked. This amendment No.(7) is a very important amendment and should be accepted.

His suggestion about foreign capitalists coming here and trying to take advantage of this article is also worthy of consideration and I hope the learned Doctor will give it the weight it deserves.

There is another word "Dominion" here. The word "Dominion" will on the ears of people after India has obtained freedom and has ceased to be a Dominion. I therefore think that in article 5-B, the words of "Dominion of India" should be changed to some other language. In fact in connection with another article of the Constitution we felt that the word "Dominion" in the Constitution should not be a reminder of the days of slavery, which we have passed. This should also be changed and the amendment contained in Professor Shah's amendment No. 20 should be accepted.

The whole article is a difficult one and Dr. Ambedkar has said that this contains the greatest common measure of agreement. The article still leaves much room for improvement. There are still many lacunae in the article which will affect millions of countrymen and also the future. The article must therefore be properly considered and amended as required.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I beg to move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

I further beg to move:

"That in amendment No. of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A, for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if', the following words be substituted:-

'Notwithstanding anything contained in article 5 of this Constitution a person who on account of Civil disturbances or the fear of such disturbances-

(a) having the domicile of India, as defined in the Government of India Act, 1935 and being resident of India before the partition, has decided to reside permanently in India; or

(b) has migrated to the territory of India from the territory now included in Pakistan;

shall be deemed to be a citizen of India at the date of the commencement of this Constitution if.' "

I further beg to move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of the proposed new article 5-A, the following words be added:-

'or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent residence in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises.' "

I further beg to move:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA-

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) the words 'or permanent return' be deleted; and

(iii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted:-

'shall be entitled to count his period of residence after the nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalization or acquisition of citizenship under any law made by Parliament'."

Sir, I move:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-A-

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted:-

"shall be eligible for citizenship by naturalization if he fulfils the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to the certificate of naturalization can be cancelled." "

Further, Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, after the words 'any person' the words 'having his domicile in the territory of India' be inserted."

Further, Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5B, for the words 'whether before or after' the word 'before' be substituted."

Further, Sir, I move :

"That in amendment No.1 of List I (Third Week) of Amendments to Amendments, in the Proposed new article 5B, the words 'or the Government of India' occurring at the end of the article be deleted."

With your permission, Sir, I would further move :

That in amendment No. 1 above, at the end of the proposed new article 5B, the following proviso be added :-

"Provided he has not abandoned his domicile by migrating to Pakistan after the 1st April 1947 or acquired after leaving India the citizenship of any other State".

Mr. President : Am I right if I say that the following amendments have been moved:

List VI/3rd Week: Nos. 160, 161, 162, 164, 165, 167, 168 and 169.

List I/3rd Week : No. 32

Pandit Thakur Das Bhargava : Yes. A perusal of articles 5, 5A, 5AA, 5B, and 5C will show that it is established that birth, domicile stay for five years, migration plus birth or registration by the officers appointed by the mint of India, or some sort of registration in any country with the Embassy have been regarded as giving qualifications for citizenship.

So far as the question of birth is concerned, I for one fail to understand how the birth of a grand-mother or the birth of a grand-parent in India or any other country can be regarded to give qualification to any person for citizenship. If you at least consider these articles separately, one by one, it would appear that there is no account taken even of birth because under 5C, if there is a foreigner and he settles in India for five years, he is also entitled to become a citizen provided he has got the domicile of India.

Similarly, with regard to domicile, this is not a condition *sine qua non*, because in 5-B, if a person was born in the territory defined in the Government of India Act, 1935 as India and is then staying in any foreign country, these two are enough for his acquiring the right of citizenship, provided he applies to the Embassy and registration is allowed. Even the domicile is not required. I do not know, Sir, what is there in this citizenship which is absolutely necessary for a person to be acquired before he becomes a citizen. To my mind, Sir, domicile is a very important factor and I should think that domicile is one of the indispensable conditions of citizenship. Whatever else may or may not be, as I understand the laws of naturalization in all civilized countries of the world, any foreigner can acquire the right of citizenship by naturalization if he satisfied the conditions laid down by the law of the land. But so far as domicile is concerned, unless this is present, in my humble opinion no person can say that he has got this citizenship of a particular country if he has not got the domicile. After all, the rights of citizenship, the obligations of citizenship, the status of being a citizen is not an ordinary matter. It is not a nebulous thing, it must be definite. I understand that a person gets certain rights by becoming a citizen of a State and he also takes upon himself, the liability to discharge certain obligations if he belongs to or is a citizen of that State. What I find is that in our desire to spread out our net too wide, we have not cared to see whether we can impose any sort of obligations on those to whom we are giving the right to citizenship : nor have we cared to see that after all, if we make a person a citizen of India we undertake a very large responsibility so far as that person is concerned. Who does not know in this House that when Miss Elise was captured by the tribal people in North-West Frontier, the whole of Great Britain was convulsed, because she was a citizen of England ? Now, Sir, do we not find that today those who are regarded as our people, and who may or may not be our citizens, are insulted in different lands and we are helpless? Do we not know that even our ladies are yet in Pakistan and we can not recover them? I do not know, Sir, if a country is so poor and so weak as not even to be able to protect the ladies or citizens of this country, what right it has got to extend its net so wide. If our country is resourceless and if we cannot find solace and comfort for and rehabilitate our refugees, what right have we got to call others from Pakistan and make them our citizens ? What right have we to call South Africans our citizens, if we have no resources in this country even to see that those who live here are properly fed and housed ?

My humble submission is that I do not want that we should make our citizenship so cheap because the State has certain obligations, and the obligations of the State are shared by the rest of the citizens : and if a citizen is insulted in any part of the country, it is the duty of the State and of the citizens of this country to see that the insult is avenged and amends are made. If we are not able to deliver the goods, what is the use of taking so many people who may or may not like to be citizens and asking them to call themselves our own citizens?

In this connection I do not want to take much time of the House, as already some of the Members have spoken in this vein on the subject. I would rather like, Sir, to give you my own views on the matter in regard to the present question. When we are making almost a provincial law I am desirous that not a single person who has come from Pakistan as a refugee should have any trouble in being a citizen of India. I am anxious that no obstacle should be placed in the way of those refugees who have come from Pakistan on account of disturbances and who have left their hearths and homes and come to this country. My second desire is that those who were desirous to become the citizens of Pakistan on the 15th August 1947 or who left this country to become citizens of Pakistan with open eyes and with the song on their lips :

*"Hanske liya Pakistan
Ladke lenge Hindustan."*

should not be made the citizens of India. Those persons have now forfeited their right to become citizens of this country. Sir, I submit that so far as these refugees are concerned they were the nationals of India. By the mere fact of partition they have not ceased to be citizens of India, provided they have come here and want to settle permanently in this country. They have every right to citizenship and any obstacle in their way I regard as unjustifiable and wrong.

With this view I have tabled my amendments. I would, with your permission, Sir, just state what further corrections or amendments I want to be made in these articles to achieve the two objects I have mentioned.

First of all I come to article 5. Before coming to the cases of those refugees and those who want to re-enter India from Pakistan, I would first refer to the case of those who come under article 5. Under this article according to the definition of the clause, there can be persons who may have never seen India. He should be a person born in India or any one of his parents should be born in India or possesses a domicile. This domicile is merely a mental attitude or conception that he may ultimately have a permanent home in India if a person desires to be a citizen of India. I do not know how this country will be able to impose any obligations on such a person. However, that is about those who were born in India or whose parents were born in India or who had the domicile of India. In regard to foreigners who desire to acquire rights of citizenship there is the Naturalization Act VII of 1926. This Act with the necessary modifications must be accepted as the law of India. In other countries also there are similar laws regarding naturalization and if any foreigner wants to become a citizen of this country the law requires not only that he should have lived for five years in the country but insists that he must be a man of good character and further that he must take the oath of allegiance to this country. With your permission, Sir, in this connection I would refer you to section 5 of the Naturalization Act VII of 1926 which gives the conditions under which a person acquires the rights of naturalization. Among other conditions like possessing a good character, etc., which are given in section 3 a further provision is made in section 6:

"Every person to whom a certificate of naturalization has been, granted shall, within thirty days from the date of the grant thereof take and subscribe the following oath, namely:-

'I, A. B. of

do hereby swear (or affirm) that I will be faithful and bear true allegiance to....."

In the case of persons who have been living here in this country, the mere fact of their stay for five years in this country should not be enough, if other conditions relating to citizenship by naturalization are waived in their favour. My humble submission is that if you study the law of naturalization you will come to the conclusion that a person who even acquires the right of citizenship by naturalization has a liability to fulfil certain conditions. He has to perform certain obligations, and be a man of good character. All those conditions are being waived and he is regarded as being a citizen of this country. It is therefore only fair that we should provide for a residence of at least ten years to show that as a matter of fact a person means to stay in India. Otherwise there are many persons who have been in the service of the Crown and have stayed here for a good time. They might now prefer to stay here for reasons best known to themselves. The difficulty in my

way is that I do not believe that those who come from Pakistan and other countries propose to stay here only for the love of the country. If they stay for that purpose, I have no objection that they become citizens of this country. But I know very well that there are a good many people who have not come to this country, or are not staying in this country with this object. In their case, I would like to provide ten years instead of five years which should be regarded as indispensable in the interests of caution.

The second amendment which I have moved is No. 161. In regard to this amendment it would appear that this seeks to make certain changes in the Preamble of article 5A. I have provided for a case in which a person born or domiciled in India as defined in the Government of India Act, 1935, if he came to India three years before Partition and has not been living here for five years. Such a man is not provided for in this article. To safeguard the rights of persons like these about whom I am told there are many in Assam I have tabled this amendment. I want that every person who had come to India before Partition and has been staying for less than five years and has decided to stay here, because he does not want to go back on account of conditions in East or West Pakistan, such a person should be allowed to be a citizen of India. If you do not provide for this class of persons many will be left without citizenship who would like to be citizens of India. This is wrong. This article 5A provides for such people whom everybody will consider to be fit citizens of India.

There is another difficulty and I do not want to conceal this fact. I have been told by a reliable authority, by some honourable Members of this House, that after partition as many as three times the Hindu refugees from East Bengal, Muslims have migrated to Assam. If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the partition for reasons best known to themselves many Mussalmans have come to Assam with a view to make a Muslim majority in that province for election purposes and not to live in Assam as citizens of India. My humble submission is that those persons have come here for a purpose which is certainly not very justifiable. Those who have come here on account of disturbances in Pakistan or fear of disturbances there certainly they must get an asylum in India. If any nationalist Mussalman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India he certainly should be welcomed. It is our duty to see that he is protected. We will treat him as our brother and a *bona fide* national of India. In regard to those others who have not come here on account of disturbances, we should not allow them to become citizens of India, if we can help it. Therefore, I have added these words:

"Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances.."

I would rather insist that that man should not come here and become a citizen just to bolster up a Muslim majority in one of the provinces of India. Therefore the first condition of migration would be that he comes here on account of disturbances. For those who want to stay here on account of disturbances the doors of India would be open. But to those who come from sinister motives, from motives of occupying lands and usurping the rightful owners by terrorising them and becoming a majority in this country, it is up to us to say that no asylum would be offered here. They are not migrating with a view to live permanently here. Their object is only to create trouble here. But to achieve our object I would request everyone to agree with me that this innovation should be made in article 5A.

Then I proceed to consider the next amendment (162). In regard to this my own fear is that when article 5A was drafted the possibility of many refugees not being covered by it was not envisaged. I am thankful to the Drafting Committee for accepting my suggestion and for being pleased to waive the condition that all the refugees should file declarations about citizenship. But, in regard to those who have come after 19th July 1948 - there will be some ignorant people, ignorant of the condition that the door will be closed on 26th January 1950 - I do not know what will happen to them. Perhaps a new law may provide something for them, that after five years residence they will be regarded as citizens. In regard to such people, I believe we are bound to make a provision that if they come to India and settle permanently, that will give them right to citizenship without any further qualifications. For that, I have provided that, if a person before the commencement of this Constitution unequivocally declares not before any officer, but by his own conduct - of permanent residence in the territory of India, he shall be a citizen of India. This question may not crop up now. But sometime it may crop up in some civil or criminal case. So, whenever a question arises whether a person is a citizen of India or not, he should be allowed to say that he came to India before the commencement of the Constitution and by permanent residence unequivocally declared his intention to be a citizen of India. I have included this provision on behalf of those who will not be registered before the commencement of this Constitution. Unless this is included you will be shutting the door against many people who, on account of ignorance or illiteracy, have not been able to take advantage of the new provision. After all, this provision has not been promulgated in the country so far and no officer has been appointed so far. We do not know what steps will be taken to get every refugee registered. When lakhs of people are involved, I think it will be difficult to inform every person to get himself registered. Therefore, no person who came to this country for permanent settlement on account of the troubles in Pakistan should say that no provision has been made by this Government for him. It is only to provide against that contingency that I want amendment No. 162 to be accepted.

Coming now to article 5AA and the provisos thereto, I must submit that I approach this subject with a certain amount of feeling. I am glad that the Drafting Committee accepted the principle suggested by me, that a person who has once migrated from this country has migrated for all time. The legal maxim is that any person who has abandoned his domicile has abandoned it for all time. There is no question of partial abandonment. The Explanation to article 5 which originally did not appear and was subsequently added there is now included in 5AA. That Explanation says that a person who migrated from the territory of India to Pakistan will not be deemed to be a citizen of India. That is good so far as it goes. But so far as the question of persons who have come to this country subsequently, after having migrated to Pakistan is concerned, a new proviso is sought to be added. I have no quarrel with that proviso except in a certain particular. If the Government of India in their wisdom have seen fit to allow thousands of people to come back from Western or Eastern Pakistan and allowed them permits for resettlement, they are themselves responsible for it. Perhaps you are not conscious as to what difficult questions of property and propriety are agitating the minds of the refugees in this connection. Now we all know that Pakistan has refused to give compensation for the properties which it originally agreed to give so far as movable property is concerned. With regard to other properties we know the attitude of Pakistan and how it is behaving. The properties of persons who are living in Pakistan have been declared evacuee property and taken possession of. I do not know how the return of these thousands of Muslims to India will affect the rights of evacuee property here, Now a new Ordinance has been passed by our Government and perhaps another is under contemplation. If a person who comes for resettlement and becomes a citizen and then after that his property is confiscated or seized. I do not know how the provisions of article 24 relating to compensate will affect him. He

may in a court of law get a declaration that he has a right to the property taken possession of by the Custodian or apply for restoration. Therefore many difficult questions are likely to arise. These questions are agitating the minds of every evacuee. Though *bona fide* refugees have not yet been rehabilitated, the houses in Delhi etc., were reserved for those who had yet to arrive from Pakistan and many of such returned people have got their houses back. There is a good deal of confusion and uncertainty in the minds of the refugees that they do not understand the position of the Government of India. At a Conference recently held some responsible persons stated that some people came here with temporary permits obtained from the High Commissioner or Deputy High Commissioner in Pakistan and were taken by Muslim dignitaries and ministers of our high placed ministers and leaders and recommended for permanent permits. This may or may not be so. But even if there was a single instance of this nature, this must give rise to agitation in minds of refugees who are driven from pillar to post and not rehabilitated properly. Therefore I say that, apart from rights to property which may run to crores, I for one do not understand how, according to law and equity, we can hold to a proposition that if any person gets a permit for resettlement in India, *proprio vigore* he becomes a citizen of India. It means that the High Commissioner at Karachi, has got the power of making any person he likes a citizen of India. It virtually comes to that. By saying this, I may be doing some sort of injustice to that dignitary. I should say in fairness that he never knew that any person to whom a permit has been given was proposed to be made a citizen of India. Therefore my humble submission is, that if he knows that his permit will have this effect, he will consider twice before issuing a permit. May I know, Sir, how any person can justify that position because the permits have been begun to be given after the 19th July 1948? Those persons who will come after the 26th July 1949 will not have completed six months before they apply for registration. Therefore, I beg to point out that permits issued between the 19th July 1948 and 26th July 1949 will only come under the provisions of this rule. After all, what is the difference between the two persons? How can anybody justify different treatment in their cases? All such persons could be considered under article 6.

Then again, Sir, when a permit for entry has been given, it means that the person concerned wants to come in and rehabilitate himself, and the provisions of the Naturalisation Act which I have read out require that this man should be of good character. I will not say that all the persons who want to come in for resettlement are coming with sinister motives, with a view to making money, with a view to dispose of their property and for other purposes. After all Sir, there are many here who have got sons there, wives there and just a son or wife here, and they get all the advantages here and all the advantages there. Now, Sir, those specially in Western Pakistan have got much more facilities, much more comfort than we enjoy in East Punjab. There is no reason why they should come here at all. My submission is that they are coming not with the idea of remaining here. Of course, they have got permits, but we all know how permits can be obtained. Sir, those people do not take any oath of allegiance to this country. We are not sure that these people are of good character. All the provisions of sections 6 and 8 of the Naturalization Act should apply to them. With your permission, I would just read out section 8 under which a foreigner from any other country would be subjected to certain liabilities and there is no reason why people coming from Pakistan and thereafter choosing to, remain here for a year or two and then going back should be treated in a different manner. The relevant portion of section 8 says-

"Where the Central Government is satisfied that a certificate of naturalization granted under this Act, or the Indian Naturalisation Act 1852, was obtained by false representation of fraud or by concealment of material circumstances or that the person to whom the certificate has been granted has shown himself by act or

speech to be disaffected or disloyal to His Majesty, the Central Government shall, by order in writing, revoke the certificate."

In the case of a man who comes to this country by obtaining a permit, where is the guarantee that he will stay here ? Even if we see under the Naturalisation Act that he behaves well, where is the guarantee, that he will not go back after he has disposed of his property ? My submission is that there is no reason why the Government of India or we should have a soft corner for these people, who come in in order to take advantage of our weakness or leniency towards them. I do not say that they should not have the right to be repatriated according to law when we have passed a Naturalisation Act under article 6 or any other article. I only want that they may be given their proper rights and to that end. I have proposed amendment No. 164 which says such persons:

"shall be entitled to count his period of residence after nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalisation or acquisition of citizenship under any law made by Parliament".

I do not disqualify him for all time. I have only sought to give him his due.

"He shall be eligible for citizenship by naturalisation if he fulfils the condition laid down by the law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalisation the certificate of naturalisation be cancelled".

Now, Sir, one of the conditions is that if during the first five years, a man goes to jail for committing any crime, then his certificate, will be revoked. Now, I do not see why this condition should not apply to those gentlemen who come here after obtaining permits. Now, Sir, with regard to 5AA, I do not want to take the time of the House any further.

I would now proceed to 5B in regard to 5B, I have already submitted that it is no use by giving rights of citizenship to any person whose parents or grandparents were born in India as defined in the 1935 Act and who is now residing outside India. He has to apply before an Embassy and this can be done before the commencement of the Constitution and even after that My submission is that in 5A, 5AA and 5C the words used are "before the commencement of this Constitution." It is only article 5B in which it is contemplated that even after the commencement of the Constitution a person can become a citizen. Now, has such a person got any sort of connection with India? His grand-parents might have been born in some far-off corner of India, but I do not see what possible connection can there be between him and India. My submission is that unless and until he can prove and show that he possesses, at least a remote, idea of returning to India, that person has no right to become a citizen of India. To be consistent, I propose that the words "whether before or after" should be replaced by the word "before" because after the commencement of the Constitution we propose to enact a law which will provide for these contingencies. In connection with 5B and 5C the words used are "subject to any law made by Parliament" and I welcome these, because after all even we are passing today rather hastily these provisions which are not justifiable after the commencement of the Constitution Parliament will have the right to rectify them. In article 5B as well as in 5C I welcome these words and I want that those words should be retained. I oppose the amendment which says that these words should not be there. After all, Parliament should be armed with powers to rectify these if it thinks them unjust. My submission is that these words "of the Government of India" should also find a place there, because before the commencement of the

Constitution ours is the Dominion Government of India. My submission is that all these three amendments should be accepted.

As regards amendment No.32, as I have already submitted, if a person has acquired the citizenship of any other country, he can not become a citizen of this country. These words do not find a place in 5B. If they are good for 5, I submit these words are good for 5B also. Therefore they should find a place in 5B also.

Now, Sir, I have come to the end of all my amendments. I have one more word to submit for your consideration. When the Act relating to these permits was placed in the House, we did not know that they would acquire this force. Now, since we find that attempts are being made to make citizens of people who have got these permits, I would beg and humbly beg the Ministry concerned not to issue any further permits. What is the meaning of taking people from Pakistan and foisting them on us when our own people are suffering ? My submission is that any further issue of these permits would not be just and would not be conducive to the solidarity of this country.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

"That in amendment No. 1 above, in the proposed new article 5A, the words 'deemed to be' deleted".

Before giving the reasons as to why I move this amendment, I would like to make few observations on the main article. Sir, the Honourable Dr. Ambedkar has rightly stated that it has given them a headache for framing this article. Originally in the Draft Constitution it comprised only one main clause and three sub-clauses. In the new article there are 6 main clauses and 6 sub-clauses. In the old article the clauses were so vague and conflicting with each other that the Drafting Committee-I am very glad-had to reconsider the whole question *de novo* and submit to this House a very comprehensive article, which in my opinion covers all the points. I have gone through it very carefully and from the experience that they have gained for eighteen months, they have come to the right conclusion and of including, even future events that are likely to occur. I therefore congratulate and compliment the Drafting Committee, not only myself, but I think the whole House will compliment them for the trouble they have taken in framing this article. It is true that there are many amendments, but I do feel that in proposing these amendments, Members do not wish to belittle the work of the Drafting Committee and the pains that they have taken to bring about such a comprehensive article; but what these amendments mean is that if there are some loop-holes or there are some points and difficulties, they would like to point them out to the Drafting Committee, so that they may consider and accept them wherever possible.

Now, Sir, coming to article 5A, my honourable Friend, Mr. Kapoor has suggested an amendment that after the words "At the commencement of this Constitution" the words "and thereafter" be inserted. Reading English as it is, it appears there is some vagueness in it that at the date of the commencement only those persons will be called as citizens of India, but I understand that under birth-right clause a person wherever he is born, he is supposed to be a citizen of that country. I am not very clear in my mind on that but if that is not so. I would really like to know whether this expression "at the date of commencement" would mean that even after the date of commencement, that is to say when a person is born after 27th of January 1950 and when he becomes a major, will be entitled to be a citizen of this country. English as it is, I take it that at the date of commencement means at that time only and not 'afterwards'. As far as my memory goes, there is

an Act which says that the birth-right of a person is born in that country is supposed *ipso facto* to be a citizen of that country. This matter, therefore requires looking into.

Then my honourable Friend, Dr. Deshmukh has suggested an amendment to this very article wherein he wants that the Sikhs and Hindus wherever they are born and whenever they desire shall be entitled to become citizens of India. When he has mentioned names of communities, I would like to point out to you, Sir, and the Members of this House, that there are nearly 16,000 Parsis who are professing the faith of Zoroastrian outside India; there are about 12000 in Iran and those persons who are in Iran are professing the same faith, as the Parsis are professing in India and I know that article 5-B covers the point which my honourable friend Dr. Deshmukh desires wherein it is laid down that even the grand-fathers and their Grandfathers if they are born in other 'countries, if they desire to become citizens of India, can so become. Dr. Deshmukh's amendment causes a wider privilege and right. Although I am not keen on this amendment if the Drafting Committee is going to consider this, I would like, them to bear in mind that there are other communities and merely to mention the Sikhs and Hindus would not I think be proper. That is the only point that I wanted to bring to the notice of the Drafting Committee. There are 12,000 Parsis who are professing the same faith as we here, but their grand-fathers are born in Iran and several of them come to Bombay and to other parts of India; they would like sometimes to make India their home. It is a far-fetched point that I am making, but if at all it is going, to be, considered, then my point is this that we need not mention necessarily 'any community'; if we do so it would look as if we are ignoring other communities which do require attention and therefore, I place this View point before the House, if they at all want to take this amendment into consideration.

Then, Sir, I am coming to my own amendment which has a bearing on article 5A wherein it states, "notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution". I want that the words "deemed to be " should be deleted. Sir, we are all very glad that the Drafting Committee has made no distinction between the citizens (original) of India and citizens who unfortunately on account of the division of India have come from Pakistan into India. So far so good : you are giving them equality of right but why do you call them "deemed to be" and why do you "give them a lower status? In the first paragraph, it is stated "he shall be a citizen of India." Why these refugees shall be "deemed to be " citizens of India and why a lower status, I rather fail to understand . Probably it has escaped the notice of the Drafting Committee and I would request them to bear this in mind seriously. We know that the refugees who have come to this country, wherever they are placed, they say that they are not wanted by the citizens either by a province or by a Government or by the people, and they always make a grievance that they are sometimes not wanted and wherever they are wanted, they are not rehabilitated and some are treated very badly. I do not share that view. I totally disagree with that view; I know that wherever they have gone, with open arms the citizens of that province have welcomed them : they are trying to rehabilitate them to the best of their ability and to give them all shelter and provide for them houses wherever is possible. But there are many refugees who take the view as mentioned by me. Why do you say in the Constitution "your status will be second, your status will not be first" ? It is a very minor thing but we should remove that kind of sentiment in this Constitution. You have given them equality of right, but why do you say "deemed to be" ? I therefore appeal to the Drafting Committee that they will kindly see that the words "deemed to be" are deleted. Mr. Kapoor has also explained this view-point elaborately but at the conclusion of his speech he said, "The Drafting Committee might consider this." I say "The Drafting

Committee must consider this." Sir, why should they "might consider" this point on which you have agreed and you want to give equal right? But why do you want to say "You might consider"? I would request them to "do kindly consider" and remove these words. I desire that they must remove them and if they do not want to remove, it is their choice; we cannot force them. When they by this clause want to treat them as equals, I submit, we should not give them the slightest chance to feel we treat them on a lower status. The refugees are having wrong notions in their minds; you do not give them a cause for complaint by putting these words in the Constitution and say that "you will have a second status in this matter of citizenship".

Then, Sir, coming to the so-called obnoxious clause, I welcome this clause, both the main clause and the proviso. Those honourable Members who have referred to this proviso are also justified in their complaint; I do not want to belittle their arguments. I want to state that this proviso is necessary. It is not a question of Mussalmans; there are hundreds of thousands of Parsis and Christians today in Pakistan who may like to come back - why should you close the door against them? They were born in India; they have everything to do with India; for certain reasons they are there. If at any time they want to come, this proviso gives them this right. I do want that right to be taken away.

But, there is one danger which my honourable Friends Messrs. Jaspat Roy Kapoor and Thakur Das Bhargava rightly stated about evacuee property. Their grievance is a legitimate one. What they stated is this. Recently, the Government of India has issued an Ordinance on the question of evacuee property. This question was the subject of inter-dominion conferences for a number of months and they came to a certain settlement in the month of January this year. The whole thing has come to a fiasco only two months ago. Pakistan broke that agreement. Properties worth crores of rupees were left in the lurch. Our Government all along wanted to take up a persuasive attitude and hope to bring them round. They made all efforts; but they failed. The point is that under this clause there are many grounds for apprehension. Parliament can make a law that a permit shall be necessary before a man comes here. After the promulgation of the Ordinance, there has been a stir in that community and the Secretariat Office, of the Bombay Government is being flooded by that class of people on the ground that these properties were left only temporarily, and that they want to come back. I also know of cases where a property was declared evacuee property by the Custodian, and after some influence, and not even compliance of the provisions of the Transfer of Property Act which was passed by this Constituent Assembly (Legislative) last April, that proclamation has been negated to be evacuee property. This has created doubt and sensation. I do not say that there is any place in the law. The law is quite clear. The action of an official has created doubts in the minds of the people. Therefore, my friends say that these people, if they come, they may settle for three years, and after selling their property, they may go back to Pakistan. There should be caution against this. I feel, Sir, that in the proviso, this caution is there, permits are Provided. Parliament will take note of this and see that the object is not fulfilled. I do not in the least deprecate the apprehension in the mind of my Friends, Thakur Das Bhargava and Jaspat Roy Kapoor; they have their genuine danger. But I do not want from this point of view that this proviso should be deleted. The reasons I have already explained, Sir. This proviso must remain for future eventualities. It may be in our own interests, it may be in the interests of those persons who are anxious honestly to come back to India.

This proviso also shows that the Drafting Committee is vigilant. Provision has also been made in article 5B for the persons who are now in foreign countries and who may feel at any time to come back. You know, recently there has been an

agitation in Malaya. In the past, many Indians went to these colonies as indentured labour, or for betterment of their future, or from the business point of view. There are lakhs of our brethren there. After attainment of freedom, if some people in these countries want to come back to India, thinking that India is free and their position and privileges would be better off in India, they should be welcomed. But, I do not share the arguments of my honourable Friend Pandit Thakur Das Bhargava, when he states that even his grand-parent was born there why should he be allowed to come here and acquire the Indian citizenship. You will have to remember the circumstances under which they went there. They are our countrymen. They are our own brethren. They had to go to foreign countries from the economic point of view. When India is free, they would like to come back. Why do you want to deny that right to them. I therefore, say, not only the grand-father, but if the great grand-father was born in India, and if they want to come back, let them come here. They should be welcome. They will be a great asset to us. After their experience in those countries, they will be very useful to us; they will be industrialists, businessmen and ardent labourers who will certainly be an asset to this country. I welcome this article also. We have Indians in South Africa and Ceylon where the new laws of citizenship, have made our Indians feel that they are being discriminated. In that even if they want to establish in India they must be permitted.

As I told you, Sir, such an eventuality may not happen. But if it does, we have to make a provision. There are 10,000 Parsis in Iran. When they were ruling until the last Kingdom of Medezand Shariar they were happy. Subsequently, under the Muslim rule, they were driven away. They came to India. Remote as the case may be, in such an eventuality in future, if these people are driven away, why should you close the door against them? Their grand parents were born in Iran, but by virtue of their being driven away, they may desire to come to India. Why should we close the door against them? Therefore, I contend that article 5B is a very helpful one. I think the Drafting Committee in framing this article has taken into consideration the recent agitation in Malaya, South Africa and probably the case of Indians in Iran has not come to their notice. Our nationals have spread all throughout the world. If their parents and grand-parents went thereunder extraordinary circumstances and became citizens of that country, and subsequently and particularly after the attainment of freedom in India if they choose to settle in this country they should not be denied the entry. I feel such *bona fide* citizens should not be denied the right of coming and establishing themselves for the betterment of themselves and for the betterment of this country.

With these words, I support the amendment that I have moved.

Shri B. P. Jhunjhunwala (Bihar: General) : Mr. President, there are two amendments in my name Nos. 123 and 150. Regarding 123, a similar amendment has been moved here and sufficient has been said on this point and I would not take the time of the House much but I would only say few words after reading it.

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5A, for the words beginning with "Notwithstanding anything" and ending 'at the date of commencement of this Constitution if', the following words be substituted:-

"Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances -

(a) having the domicile of India as defined in the Government of India Act, 1935, and being resident in India before the partition, has decided to reside permanently in India, or

(b) has migrated to the territory of India from the territory now included in Pakistan,

shall be deemed to be a citizen of India at the date of commencement of this Constitution if.' "

The object of moving this amendment of mine is that article 5 contemplates the general principle of citizenship and we have given some concession in article 5A to persons who have come from Pakistan. Article 5 says :

"(a) Any person who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State."

I want by my amendment to confine the right of acquiring citizenship just after residing for six months, at the date of commencement of this only to displaced persons, and others who come under article 5A can very well acquire the right of citizenship after remaining in India for five years. I do not really understand the object of article 5A when it extends the right to persons other than those who have been refugees or who have been displaced or have come from Pakistan on account of civil disturbance or the fear of such disturbances. I do not understand where is the hurry about it. If the right of six months be confined only to such persons, then there is absolutely no difficulty, because after all we have not taking away the right of acquiring citizenship from any persons who come from Pakistan. The only thing we want to know is the real intention of the persons who has come to India and is residing here, and we shall know it better during the period of five years, I have been told that from Eastern Pakistan people are infiltrating into Assam for some sinister motive *i.e.* to increase their population. It is not my first hand knowledge, but responsible reliable persons have told me like thing. This has led me to move this amendment. They are going to Assam, not because they are inconvenienced in Pakistan, but simply with a view to remain in Assam and increase their population there. It is to avoid giving right to such persons that I am moving this amendment.

The other amendment I have proposed is No. 150 and similar amendment has been moved by my Friend Professor Shah and he has spoken a lot over it and I share his views. The amendment reads :

"That in amendment No. 6 of List I (Third Week) of Amendments to Amendments, after the proposed new clause (2) of article 5, the following proviso be added :-

"Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal right of citizenship to the national of India settled there and desirous of acquiring the local citizenship.' "

Shri S. Nagappa (Madras : General) : Sir, I beg to move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5A, for the words 'on an application made' the words 'on a statement or an application made' be substituted".

I also move :

"That in amendment No. 1 above, in the proviso to the proposed new article 5A, for the words 'the application' the words 'the statement or application' be substituted."

Sir, in moving this my intention is that the word "application" means it should be only a written one. In our country, literacy is very low and so the majority of the people who seek citizenship may not be educated and may not be in a position to make an application in writing. So, I suggest that a man who is not in a position to make an application can merely make a statement. The statement should be given as much importance as is given to an application. I hope the Honourable Dr. Ambedkar and the House will concede this request.

Sardar Bhopinder Singh Man (East Punjab: Sikh) : Since the time is limited, I request that I may be permitted to move my amendment formally and make my observations tomorrow or I may be permitted to move it tomorrow.

Mr. President : You may move it now and speak tomorrow.

Sardar Bhopinder Singh Man : Sir, I move:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, the proposed proviso to the proposed new article 5AA be deleted".

This proviso which has now been incorporated by Dr. Ambedkar reads as follows :

"Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948."

Sir I feel that this Proviso (and we are agreed on it) is absolutely obnoxious and does injustice to the Hindu and Sikh refugees who have come here and are awaiting resettlement.

Mr. President : The Honourable Members may continue his speech tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 12th August 1949.

[Translation of Hindustani speech.]

**CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)
- VOLUME IX**

Friday, the 12th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(Contd.)

Articles 5 and 6-(Contd.)

Sardar Bhopinder Singh Man (East Punjab: Sikh) : Sir, in the 'definition of citizenship' which covers fairly extensive ground the view-point of Hindu and Sikh refugees has been met to some extent by the Drafting Committee whom I congratulate on that account. But, as usual, a weak sort of secularism has crept in and an unfair partiality has been shown to those who least deserve it. I was saying that the Hindu and Sikh refugees view-point has been met to some extent, but not wholly. I do not understand why the 19th July 1948 has been prescribed for the purpose of citizenship. These unfortunate refugees could not have foreseen this date; otherwise they would have invited Pakistan knife earlier so that they might have come here earlier and acquired citizenship rights. It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone else. This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. Our demand is that any person, who because of communal riots in Pakistan has come over to India and stays here at the commencement of this Constitution, should automatically be considered as a citizen of India and should on no account be made to go to a registering authority and plead before him and establish a qualification of six months domicile to claim rights of citizenship. There may be victims of communal frenzy in our neighbouring State hereafter; it is not only a possibility but a great probability in the present circumstances. Any failure of the evacuee property talks may lead to a flare-up against Hindus and Sikhs in Pakistan, and we must have a clause that these people will in no case be debarred from coming over and becoming citizens of this Union.

Article 5-AA lays down in the beginning.

"Notwithstanding anything contained in 5 and 5-A, a person who has after 1st of March 1947 migrated from the territory of India to the territory now included Pakistan shall not be deemed to be a citizen of India."

The purpose of this clause will be completely nullified, because we who are refugees, due to this exchange of population which necessarily involves exchange of property, will be put to serious trouble. This securing of permit from the Deputy High Commissioner's office, I can assure you, is a cheap

affair in its actual working. Besides these permits when they were issued, they were issued for various other purposes commercial trade, visiting purposes etc.- and never at any rate for citizenship. We should not give citizenship merely on the ground that a person is in a position to produce this permit, which he can secure from the Deputy High Commissioner's office somehow or other. I feel that if at all the permit system was intended to confer benefits of citizenship, then a particular authority specifically constituted for that purpose should have been there and that authority should have realized at the time of giving the permit the implication that this is not simply a permit to enable a person to visit India for trade or Commerce but that it will entail along with it citizenship rights also. Apart from that, let us see how this will adversely affect evacuee property. Very recently an Ordinance has been promulgated throughout India that the property of a person who has migrated to Pakistan after March 1947 will accrue to the Custodian-General of India and that property will be, to that extent, for the benefit of the rehabilitation of refugees. The Indian Government is already short of property as it is and it is unable to solve the rehabilitation problem. The difference of property left by Indian nationals in Pakistan and the one left behind by Muslims, in India-this difference of property cannot be bridged. Pakistan has not given you a satisfactory answer how it is going to re-pay that difference. Naturally, our policy should have been to narrow down this difference of property. This clause, instead of narrowing down that difference, will widen it. Thus, while on the one hand we are unable to help refugees, on the other hand we are showing concession after concession to those people who least deserve it. I am told that these permits will be granted only in very rare cases. I am told that only 3,000 of them have been granted. Now, I do not know how much property will be restored back to those people who will come under this permit system-may be a crore or may be much less-a few lakhs. My point is this : that this property which will eventually go to these permit-holders will go out of the evacuee property and out of the hands of the Custodian-General and the very purpose of the Ordinance which you recently promulgated will be defeated.

The securing of a chance permit from the Deputy High Commissioner's office or any other authority should not carry with it such a prize thing as citizenship of India, or that the holders be considered to be sons of Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meostan and they were involved in very serious rioting against the Hindus-their neighbours at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees. I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago. Yesterday, Mr. Sidhva gave an argument that this proviso will not only cover Muslims who had gone to Pakistan and will return later on, but also other nationals, e.g., Christians. But may I inform him that there is not a single Christian living in India who has gone over to Pakistan and who will come back later on?

It is only certain Christians now finding themselves living in a theocratic State and finding things were uncomfortable that will come in. It is not the case of those Christians who are gone over and then will come back, whereas

this proviso relates to those people who were once nationals of India but at the inauguration of Pakistan went over to Pakistan for the love of it.

I certainly grudge this right and concession being given to those people who had flagrantly violated and dishonoured the integrity of India, but, however, if Mr. T. T. Krishnamachari, or the Chairman of the Drafting Committee, or better still, Mr. Ayyangar who daily carries on such protracted, patient and fruitless negotiations with Pakistan, can promise to us a certain strip of Pakistan territory to India in lieu of this increase of population and release of property, I will certainly not press my amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim) : Mr. President, Sir, there are three amendments which stand in my name, amendments Nos. 120, 125 and 126. The purpose of my amendment No. 125 is to deal with cases of displaced persons who have come from Pakistan to India and who may file their applications after the commencement of this Constitution. The definition, as it has been placed before us, does not deal with the question of grant of citizenship to persons after the commencement of this Constitution except in the case of persons who are living overseas. But it has been stated by Dr. Ambedkar that this will be left to the Parliament. As has been pointed out by my honourable Friend Mr. Kapoor in between the date of the passing of this Constitution and the enactment by Parliament which might take five or ten years, there may be cases cropping up for decision whether a certain person is a citizen of India or not. The purpose of my amendment No. 125 also is similar. It is to give an opportunity to persons to file petitions for enrolment as citizens even after the passing of this Constitution.

Amendment No. 126 reads as follows :--

That in amendment No. 1 of List 1 (Third Week) of Amendments to Amendments for the proposed new article 5-C, the following be substituted:-

"Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualifications for citizens mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution."

Article 5-C deals with the question of continuation of the citizenship acquired on the date of the passing of this Constitution. I submit that 5-C is unnecessary. A man once declared a citizen on the date of passing of the Constitution will continue to be so unless Parliament disqualifies him. Therefore 5-C to my mind is unnecessary. On the other hand, what is necessary is to say who would be entitled to citizenship after the passing of this Constitution. That is more important, that is necessary. For that purpose, I have suggested amendment No. 126, in order to give a complete picture of citizenship not only on the date of the passing of this Constitution but even afterwards, until such time as the Parliament may pass a legislation abrogating it or varying it or doing whatever it wanted to do. I submit that this amendment is necessary in order that you might determine who will be the citizens even after the passing of this Constitution.

So, amendments Nos. 125 and 126 are meant to fill the lacuna which I find in this article. It is stated by Dr. Ambedkar that we are not legislating now for the future, that is why we are not laying down any qualifications to deal with cases of persons who might become citizens after the passing of this

Constitution. My submission is that many persons who might, under the qualification laid down in this definition, become citizens or be entitled to citizenship, will be left out and we will not be in a position to help them until the Parliament passed an enactment.

Sir, with regard to amendment No. 120 I have suggested that the explanation to the proposed article 5 be deleted. The explanation reads :-

"For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan."

The explanation is found in the amendment given notice of on 6-8-49. When subsequently Dr. Ambedkar moved a revised amendment to articles 5 and 6, although this explanation was deleted its place was taken by article 5-AA which is in effect the same thing as the explanation. Now, Sir, I wish that this explanation or this 5-AA is deleted altogether. I do not want that our dealing with the subject of displaced persons must be undignified. It is enough if we have stated what qualifications persons should have, who have been displaced. That has been dealt with in 5-A. That is enough. I do not see any reason why, we should make mention of displaced persons from India to Pakistan who might return. The other qualifications are there. In this respect, I submit that it must be noted that persons who migrated from one Dominion to another whether it is from Pakistan to India or India to Pakistan did so under very peculiar and tragic circumstances. If persons migrated from Pakistan to India, as has been suggested in many amendments, they did so on account of disturbances, civil disturbances or fear of disturbances. What applies to them might equally apply to persons who migrated from India to Pakistan. I do not see any reason why we should make such an invidious distinction.

Sir, now I would like to refer to two or three points discussed yesterday. Yesterday, the discussion centered round two topics. The first was that the definition of citizenship was too easy and cheap, and Dr. Deshmukh even said that it was ridiculously cheap. Another Member remarked that it was commonplace and easy. Those were the remarks made by some honourable Members. It was Dr. Deshmukh who said if a foreign lady visiting India gives birth to a child say, in Bombay, her child will be eligible for citizenship of India. Such an interpretation, making the provision look ridiculous, is correct. The condition of domicile is very important. Domicile in the Indian territory is a prerequisite for citizenship. The other conditions are that the claimant or his parents should have been born in India and been here for five years. Therefore, the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said, "Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirty five years." May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons: "Look here, you have not given citizenship right to Indians living in your countries for decades ?" Can we complain against them if we are going to deny them citizenship rights here ? Let us not follow those bad examples. There are persons in India owning dual citizenship. We in India are having dual citizenship. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should

contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there.

Now, Sir, my view is that I should congratulate the Drafting Committee for having brought out this article in this form. My criticism with regard to it is that it is not complete. In the first place, it does not deal with case, of person who might claim citizenship after the passing of this Constitution till such time as Parliament decides the question.

My second point with regard to this is that in articles 5-A and 5-AA there are two defects. Article 5-A says that any person who has come to India from Pakistan must have a certificate. I ask, why ? Why do you want a certificate. You have stated that if a person is born in India as defined in the 1935 Act he is a citizen of India. Why do you want a certificate from him when he returns to India ?

Shri M. Ananthasayanam Ayyangar (Madras: General): Why did he go to Pakistan?

Mr. Mahboob Ali Baig Sahib : He did not go there. He was there. I am speaking of a person who was in Pakistan and is returning.

Shri M. Ananthasayanam Ayyangar : When did he return ?

Mr. Mahboob Ali Baig Sahib : He was a citizen of India when Pakistan was included in India under the 1935 Act. I am speaking of a person who has been living in Pakistan which formed part of India and wants to return. Why do you want a certificate from him ? Why do you want that he should reside here for six months? Why do you expect him to file a petition and be here for six months? He is an Indian and comes down here, not voluntarily, but under very tragic circumstances. He comes over to India because he could not live there on account of civil disturbances or for fear of civil disturbances. I do not want that any certificate should be produced by a person who comes from Pakistan to India.

The Honourable Shri K. Santhanam (Madras : General) : It is only from those who would return after 19th July 1948 that a certificate would be needed.

Mr. Mahboob Ali Baig Sahib : I know that. It does not make any difference at all. The question of a person who migrates from Pakistan to India is a very touchy question. People have become excited over it and also sentimental and aggressive. It is all unnecessary for us. Let us calmly consider this matter. What is the difference between a person who has gone away to Pakistan under the same and similar circumstances as those which compelled persons remaining in Pakistan to migrate to India? I can understand the cases, where people went away to Pakistan or came back to India in order that they might live in Pakistan or Hindustan. There may be instances where for reasons of service, persons who are employed in the provinces of Pakistan coming back to India. There are cases of that kind. Sir, it is correct that when

partition took place, when the June 3rd Agreement was entered into by both parties, it was expected that the minorities would remain where they were in the two Dominions and safeguards would be given to them. That was the honest expectation, that was the honest undertaking, but what happened was that after the transfer of power there was a holocaust, there were disturbances, there were tragedies which compelled persons to migrate. Now, Sir, when these were the circumstances, is there any justification for us to draw any distinction-I would go to the length of saying any discrimination-between those persons who migrated to India and those who migrated to Pakistan under the same circumstances? Let us not forget what during his life-time Mahatma Gandhi was preaching. What did he say? He invited the persons who had gone to Pakistan to return to their homeland. So, Sir, let us look at this matter calmly. I know there are many persons who are affected in this Assembly, who have lost their houses, who have lost their property, who have lost their professions, their status, everything. I know they are really affected. They are really touchy about this matter, but let us calmly think, over these matters. Let it not be said that because certain Members of this Assembly were hard hit on account of the Partition and were in a very-bad mood, in their bad mood they have passed this article 5-AA. So far as it goes, it is tolerable, as, if a person wants to resettle, he can make a citizen; but the real point is about those people who come back -I do not know whether people are coming back. I am very much surprised to hear that such persons who are coming back may be traitors. The arm of the law should be so strong that it must be able to get at any man who becomes a traitor. What would you do if one of your men becomes a traitor, a Communist and tries to overthrow the Government? So, to say those people coming to India might become traitors and therefore they should not be allowed to come back, that is no reason at all. With this temperament you will never become strong. That kind of psychology should be shunned, must be got rid of. Moreover, we are only legislating for the present. Parliament may in its discretion, if it thinks it to be necessary, deprive any person of his citizenship and expel him. Parliament is supreme in this matter. Therefore, I do not see any reason why you should make a distinction between persons who go from here to Pakistan and persons who come from Pakistan. This is based on pure sentiment and does not inspire confidence not only among those persons but also amongst others. I would conclude by saying, let us consider this matter calmly and if we think that Mahatma Gandhi's teachings were correct, let us not go against his teachings and legislate like this, making a distinction between these two sets of people.

Mr. President : There are one or two amendments. Notice of one of them was given rather late yesterday by Mr. Krishna Chandra Sharma, but I would permit Mr. Sharma to move it. There is another amendment, notice of which was given today by Mr. Jai Sukh Lal Hathi. I do not think I can allow it. It has come too late. Mr. Krishna Chandra Sharma.

Shri Krishna Chandra Sharma (United Provinces : General) : Sir, I do not propose to move it.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Sir, I wish to support the proposals made by Dr. Ambedkar as well as the amendment which Mr. Gopalaswami Ayyangar has proposed. All these articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution.

Now, these difficulties have arisen from two factors. One was of course the partition of the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these articles were drafted with a view to providing for these two difficulties. Personally, I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consul Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names.

Now I find that most of the arguments have taken place in regard to people who are the victims in some way or other of partition. I do not think it is possible for you to draft anything, whatever meticulous care you might exercise which could fit in with a very difficult and complicated situation that has arisen, namely the partition. One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore, you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them. I think the drafters of these proposals have succeeded in a remarkable measure in producing something which really deals with 99.9 per cent of cases with justice and practical commonsense; may be some people may not come in. As a matter of fact even in dealing with naturalization proceedings, it is very difficult to be dead sure about each individual and you may or you may not be taking all of them. But the chief objection, so far as I can see, has been to the amendment that Mr. Gopalaswami Ayyangar has moved to the effect that people who have returned here permanently and in possession of permanent permits shall be deemed to be citizens of India. They are rejected and presumably their presence is objected to because it is thought that they might take possession of some evacuee property which is thus far being considered as an evacuee property and thereby lessen the share of our refugees or displaced persons, who would otherwise take possession of it.

Now, I think there is a great deal of misunderstanding about this matter. Our general rule as you will see in regard to these partition consequences, is that we accept practically without demur or enquiry that great wave of migration which came from Pakistan to India. We accept them as citizens up to some time in July 1948. It is possible, of course that in the course of that year many wrong persons came over, whom we might not accept as citizens if we examine each one of them; but it is impossible to examine hundreds of thousands of such cases and we accept the whole lot. After July 1948, that is about a year ago, we put in some kind of enquiry and a magistrate who normally has *prima facie* evidence will register them; otherwise he will enquire further and ultimately not register or he will reject. Now, all these rules

naturally apply to Hindus, Muslims and Sikhs or Christians or anybody else. You cannot have rules for Hindus, for Muslims or for Christians only. It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all. It is possible that later, because of this permit system, some non-Hindus and non-Sikhs came in. How did they come in? How many came in? There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to Indian and settle down here.

Now, in the case of all these permits a great deal of care has been taken in the past before issuing them. In the case of those permits which are meant for permanent return to India and settling here again, a very great deal of care has been taken. The local officials of the place where the man came from and where he wants to go back are addressed; the local government is addressed, and it is only when sufficient reason is found by the local officials and the local Government that our High Commissioner in Karachi or Lahore, as the case may be, issues that kind of permit.

Shri Gopikrishna Vijayavargiya (Madhya Bharat) : What is the number of such permits ?

The Honourable Shri Jawaharlal Nehru : I have not got the numbers with me but just before I came here, I asked Mr. Gopalaswami Ayyangar; he did not know the exact figures and very roughly it may be 2,000 or 3,000.

Now, normally speaking, these permits are issued to two types of persons. Of course, there may be others but generally the types of persons to whom these are given are these. One is usually when a family has been split up, when a part of the family has always remained here, a bit of it has gone away, the husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back, we have allowed them to come back where it is established that they will remain here throughout. Normally, it is applied to cases of families being split up when we felt assured that the family has been here and have no intention of going away and owing to some extraordinary circumstances, a bit of that family went away and has wanted to come back. It is more or less such general principles which have been examined and the local government and the local officials have recommended that this should be done and it has been done. That is the main case. Then there are a number of cases of those people whom you might call the Nationalist Muslims, those people who had absolutely no desire to go away but who were simply pushed out by circumstances, who were driven out by circumstances and who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable for them and right through from the beginning they expressed a desire to come back and some of them have come back. My point is that the number of cases involved considering everything, is an insignificant number, a

small number. Each individual case, each single case has been examined by the local officials of the place where that man hails from; the local government, having examined, have, come to a certain decision and allowed that permit to be given. Now, it just does not very much matter whether you pass this clause or not. Government having come to a decision, any person after he has returned he is here; and having come here, he gets such rights and privileges, and all these naturally flow as a consequence of that Government's decision. It is merely clarifying matters. It does not make any rule. Suppose a question arose in regard to a very little or an insignificant property is concerned, not only because the principles involved; but also because a certain family or a part of a family was split up but otherwise here held on to the property, so that the family that came back came to the property which is being held by the other members of the family and no new property is involved. No new property is involved and if some new property is involved, it is infinitesimal. It makes no great difference to anybody. From a person coming here after full enquiry and permission by the Government, after getting a permit, etc., certain consequences flow even in regard to property. If these consequences flow, if he is entitled to certain property, it is because he is a citizen of India and the local Government has decided, whether it is the East Punjab Government or the Delhi Government or the U.P. Government. You do not stop them by not having this amendment or by having it. You can stop them, of course, by passing a law as a sovereign assembly. It is open to you to do that; but it does not follow from this. I would beg of you to consider how in a case like this, where after-due enquiry Government consider that justice demands, that the rules and conventions demand that certain steps should be taken in regard to an individual,-- I do not myself see how-without upsetting every canon of justice and equity, you can go behind that. You may, of course, challenge a particular case, go into it and show that the decision is wrong and upset it, but you cannot attack it on 'Some kind of principle'.

One word has been thrown about a lot. I should like to register my strong protest against that word. I want the House to examine the word carefully and it is that this Government goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear answer to that. If so, I would only plead for appeasement. This Government will not go by a hair's breadth to the right or to left from what they consider to be the right way of dealing, with the situation, justice to the individual or the group.

Another word is thrown up a good deal, this secular State business. May be beg with all humility those gentlemen who use this word often to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty.

I do not just understand how anybody possibly argue against the amendment that Mr. Gopalaswami Ayyangar has brought forward. To argue against that amendment is to argue definitely for injustice, definitely for discrimination, for not doing something which after full enquiry has been found to be rightly done, and for doing something which from the practical point of view of numbers or property, has no consequence. It is just dust in the pan. In order to satisfy yourself about that little thing, because your sense of property is so keen, because your vested interest is so keen that you do not wish one-millionth part of certain aggression of property to go outside the pool, or because of some other reason, you wish to upset the rule which we have tried to base on certain principles, on a certain sense of equity and justice. It will not be a good thing. I appeal to the House to consider that whether you pass this amendment of Mr. Gopalaswami Ayyangar or not, the fact remains that this policy of the Government has to be pursued and there is no way out without upsetting every assurance and every obligation on the part of the Government every permit that has been issued after due enquiry. Again, so far as this matter is concerned, please remember that the whole permit system was started some time in July 1948, that is to say after large-scale migration was over completely. To that period, from July 1948 up till now, this amendment refers to in a particular way, that is to say, it refers to them in the sense that each such person will have to go to a District Magistrate or some like official and register himself. He cannot automatically become a citizen. He has to go there and produce some kind of *prima facie* proof, etc., so that there is a further sitting. He has to pass through another sieve. If he passes, well and good; if not, he can be rejected even at this stage. The proposals put forward before the House in Mr. Gopalaswami Ayyangar's amendment are eminently just and right and meet a very complicated situation in as practical a way as possible.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. President, after the lucid exposition of the subject by Dr. Ambedkar in his introductory remarks and the very clear statement of policy and principles by the Prime Minister, I do not propose to take the time of the House with a long speech. I may explain briefly what I consider to be the main principles, of the articles that have been placed before the House.

The object of these articles is not to place before the House anything like a code of nationality law. That has never been done in any State at the ushering in of a Constitution. A few principles have no doubt been laid down in the United States Constitution: but there is hardly any Constitution in the world in which a detailed attempt has been made in regard to the nationality law in the Constitution. But, as we have come to the conclusion that our Constitution is to be a republican constitution and provision is made throughout the Constitution for election to the Houses of Parliament and to the various assemblies in the units, and for rights being exercised by citizens, it is necessary to have some provision as to citizenship at the commencement of the Constitution. Otherwise, there will be difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution. The articles dealing with citizenship are, therefore, subject to any future nationality or citizenship law that may be passed by Parliament. Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country. It is not to be imagined that in a Constitution dealing with several subjects it is possible to deal with all the complicated problems that arise out of citizenship. The question has been raised regarding what is to be the status of married women, what is to be the status of infants or in regard to double nationality and so on. It is impossible in the very nature

of things to provide for all those contingencies in the Constitution as made by us.

Then one other point will have to be remembered regarding citizenship. Citizenship carries with it rights as well as obligations. There are obligations also upon the Government of India in regard to their citizens abroad.

Another point that will have to be remembered in this connection is this. While any law as to nationality or citizenship may carry with it certain international consequences, it is not easy to provide against what may be called double citizenship. The various International Conferences found it very difficult to formulate any principle which can remove altogether the principle of double citizenship. It arises out of the fact that primarily it is for each nation to determine its nationality law and its law of citizenship. At the same time it has its international consequences, *e.g.*, the Continental law as to citizenship is not the same as the English law and on account of that certain conflicts have arisen.

Therefore, there is no use of our attempting in any Constitution and much less in the present Constitution which is now making a tentative proposal in regard to citizenship to deal with the problem of double citizenship or double nationality. All these considerations have been kept in view in these articles that have been placed before the House. I shall just briefly refer to the principles underlying each one of these articles.

As against article 5 (1) a point has been made by some of the speakers that it concedes the right of citizenship to every person who is born in the territory of India and that is rather an anomalous principle. I am afraid the critics have not taken into account that our article is much stricter, for example, than the Constitution of the United States. Under the Constitution of the United States if any person is born in the United States he would be treated as a citizen of the United States irrespective of colour or of race. Difficulty has arisen only with regard to naturalisation law. We have added a further qualification *viz.*, that the person must have his permanent home in India. I am paraphrasing the word 'domicile' into 'permanent home' as a convenient phrase.

Then clause (c) of article 5 takes notes of the peculiar position of this country. There are outlying tracts in India like Goa, French Settlements and other places from where people have come to India and have settled down in this country, regarding India as a permanent home, and they have contributed to the richness of the life in this country. They have assisted commerce and they have regarded themselves as citizens of India. Therefore, to provide for those classes of cases it is stated in clause (c) that if a person is continuously resident for a period of five years and he has also his domicile under the opening part of article 5, he would be treated as a citizen of this country. Then towards the end it is stated that he shall not have voluntarily acquired the citizenship of any foreign State. If a citizenship is cast upon a person irrespective of his volition or his will, he is not to lose the rights of citizenship in this country but if on the other hand he has voluntarily acquired the citizenship of another State, then he cannot claim the right of citizenship in this country. That is the object of the latter part of article 5.

Article 5A is intended to provide for all cases of mass migration-if I may use that expression-from Pakistan into India and to provide for that class of persons who have made the present India as their home. Now they are in our

country and want to make this their home. We do not in that article make any distinction between one community and another, between one sect and another. We make a general provision that if they migrated to this country and they were born in India as defined in the earlier Constitution, then they will be entitled to the benefits of Citizenship. That is the import of article 5 A, clause (a). Clause (b) provides for registration of migrated people. Certain safeguards are provided for in clause (2) so as to make it quite clear that the authorities accept the migrated people as *bona fide* citizens of this country. That is the object of this clause. There is also a provision to the effect that no registration shall be made unless the person making the application has resided in the territory of India for at least 6 months. Therefore, there are two safeguards, (1) there will be registration and (2) no registration shall be made unless the applicant has resided in the territory of India for at least six months before the date of application. If article 5-A stood by itself it would mean that even if persons went to Pakistan with the deliberate intention of making Pakistan their permanent home, and re-migrated to India they might be entitled to the benefit of 5A. In order to provide against that contingency 5AA is proposed which reads as follows:-

"Notwithstanding anything contained in articles 5 and 5A of this Constitution, a person who has, after the first day of March, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India."

There is no use dealing with this in the abstract. If a person has deliberately and intentionally chosen to be the citizen of another country, after the question had arisen, after Pakistan had been declared territory independent from India, then there is no point in conceding citizenship right to such a person. But this proviso takes note of this important fact that the Government of India have permitted a certain number of people to come and settle down here after being satisfied that they want to take their abode here and in no other country, and that they look upon this country as their own. Having given that assurance, it would be the grossest injustice on the part of the Government of India now to say that they are not entitled to the rights of citizenship of India. The proviso safeguards the dignity, the honour and the plighted word of the Government of India by saying that such a person will be entitled to the benefits of citizenship. This is an exception to the general rule, under article 5AA, namely, that if a person deliberately, voluntarily and intentionally migrated to Pakistan, he shall not be entitled to claim the right of citizenship of our country. It is our duty, to respect the plighted word of the Government of India. That is the object of the proviso.

There is some confusion in the minds of some people as if the rights to property were in some way related to citizenship. There is no connection whatsoever, either in international law or in municipal law between the rights of citizenship and the rights to property. A person has no particular rights to property, because he belongs to a particular country. Many of our nationals have property in the United States, in Germany, in England and in several other countries, but these do not depend upon their being the nationals of those countries. Nationality or citizenship has nothing to do with the law of property. At the same time, the exigencies of a situation may require property to be controlled. For instance, during a war, the conditions may require the State to exercise some control over enemy property or the property of foreigners. That is not to say that the property of the foreigners or the enemy

has been confiscated. No principle of international law, no principle of comity of nations recognizes this principle.

In article 5-B, we have made provision for those of our nationals who are outside India, in the Strait Settlements and in other places. They are anxious to retain their connection with the mother-country. They may or may not have acquired some rights to qualify them for citizenship in those States but in those cases in which they are born in this country or if they are the children or grandchildren or persons born in his country, they are to be given the right of citizenship. They had left this country long ago and gone to another country, because we were not able to provide them the necessary means of livelihood—at least not under the British regime. (Let us hope that our record would be better). But they are anxious still to retain the links with the motherland, they have sentimental attachment to this country and are anxious to continue as citizens of our country. They also will be entitled to citizenship. That is the object of article 5-B.

As has been pointed out by the Prime Minister on more than one occasion, we have arrived at the present draft after a number of meetings, and a number of conferences at which different view-points were sought to be met. Of course, it is not possible to satisfy everyone, and it is not possible to arrive at a formula which will satisfy everyone affected.

We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions.

With these words, I support the articles as placed by Dr. Ambedkar and also the amendments moved by my Friends Shri Gopalaswami Ayyangar and Shri T.T. Krishnamachari.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T.T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs, spies, fifth columnists and adventurers. I wish the proviso had been more wide. I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics centuries before recorded history. Hindus and Muslims in this country were one. We were talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common

citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand, I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus.

Another point that was raised by my Friend Shri Jaspat Roy Kapoor was that we must have proper regard for the economic consequences of the proviso. I wish this argument had not been raised. We are not a nation of shopkeepers; we cannot dethrone God and worship Mammon. Whatever the economic consequences may be we want to stand on certain principles. It is only by a strict adherence to certain moral principles that nations progress. The material development of life is no index to progress and civilization. I do not think it is politics or statesmanship to subordinate sound political principles to cheap economics. I see no reason why a Muslim who is a citizen of this country should be deprived of his citizenship at the commencement of this Constitution, specially when we are inviting Hindus who have come to India from Pakistan to become citizens of this country. People who have never been in India but have always lived in the Punjab and on the frontier have come and become citizens of this State; why cannot a Muhammadan of the frontier be so when we have always said that we are one?

It has also been asserted that it was the fact of partition that was responsible for mass migration. I do not agree with that proposition. The late lamented Mr. Jinnah stood for the principle of exchange of population. We disagreed. The implication of our rejection of that demand was that the fact of partition would have no bearing on the question of loyalty of Muslims of this country. Partition or no partition, the Muhammadan will remain loyal to this country. That was the meaning of the rejection of the demand of Mr. Jinnah. And how can we say that the fact of partition was responsible for mass migration? It must be realised that it was the riots and the disturbances in certain parts of the country which were responsible for mass migration. Even now the relations between the two Governments have not become stabilised; and it is only with the establishment of good relations between the two States that there can be security and people who belonged to this country and were citizens of this country would come back and settle in this country.

Maulana Mohd. Hifzur Rehman (United Provinces : Muslim) : * [Mr. President Sir, article 5 as amended by Dr. Ambedkar is before us in its present form. So far as I have seen and examined it I understand that sufficient efforts have been made to explain at considerable length the rights of citizenship which are due to a person in the capacity of a citizen. Two things have been kept in view. On one hand provision has been made that a citizen should be entitled to those rights which are due to him as a citizen. On the other hand the other thing has also been kept in view and it has been considered that in case any person tries to become a citizen by unlawful means, necessary safeguards must be provided against that. I think this step is praiseworthy and to me it appears desirable. In this connection the principle and policy which have been laid out by honourable the Prime Minister and honourable Shri Gopalaswami Ayyangar gives us great satisfaction. In spite of

this I feel the absence of two things and I desire to draw the attention of the House towards these.

Of course details are not available regarding those people who have come with permanent permits. But it has also been explained now that those people who have come with permanent permits will be regarded as citizen in a certain way. The other thing which deserves our attention is that perhaps in the date which has been mentioned here no notice has been taken of the notification of the Government of India in which from time to time the government offered facilities to those coming from Pakistan. In article 5 three or four clauses have been made which do not impose restrictions and conditions, and these have been accepted and these four classes will be considered as citizens in this way. Further in 5A where it has been laid down as to who else will be considered as citizen, it has been said that those people who have come before 19th July, 1948, will be regarded as citizens. But those who have come later on have got to get themselves registered by applying. The condition of registration has been made necessary here. I want to say that the date which is mentioned in the notification issued by the Government of India is 10th September. It is made clear therein that they should also be regarded as citizens, provided the local authorities declare their permits as valid and recognize them. I would also say that, as regards those who have come with permanent permits or in any other capacity, this should have also been included in this amendment, if the Government of India in their notification have given this facility that those coming upto 10th of September shall be regarded as the citizens of India.

In the first amendment, instead of 1st August, 1948, 19th July, 1948, should not have been included. It would have been more just if 11th September should have replaced 19th July so that everybody should have availed of the utmost time for securing the right of citizenship. This would have meant that according to the date referred in the notification, issued by the Government of India, those people who would have come till 11th September should be regarded citizens without any condition.

The next question is this, that those who have come with permanent permits shall have to fulfill the condition of registration for their recognition as citizens. In this connection I submit that it has been made clear that the enquiries will be made about those people who have come here from the 19th July to the 11th September and after that they will be considered to be the citizens of India. In my opinion the restriction that has been imposed on them is quite unjust and that it goes against justice and fair play. We know very well and the House also is aware of the fact, that those who are given permanent permits can be recognized citizens only when the bona-fides of the permit holders are enquired into and that conspirators and cheats or those who have come to consolidate their business are not among them. First of all, the local authorities enquire into their details and then given them permits. In other words the local authorities give a permit only when they are completely satisfied and in no way before it. If over and above all this, the restriction of registration is imposed on them I will say that it is far from just. Therefore, I say that it has not been made clear whether, to acquire the right to citizenship, such a person has only to apply for registration: or is this also essential, that after the submission of such application, the local officials should make inquiries about it, and get him registered only if they are completely satisfied, otherwise they would have the right to reject his application? You know well that thousands of men have come back to Indian Union by now. A large number of them had come back soon after the

disturbances. Of course there are people also who came back rather late, because they had difficulties in getting their permits. They were obliged to come late, for the simple reason that they could not get their permits in time. We have had experience that those persons who after coming back from Pakistan applied to the local officials for their permanent residence in Indian Union, and cancellation of their permit under the notification of the Government of India, were not made permanent residents and their permits were not cancelled within the fixed period.

It is our experience that the administration often creates such difficulties. Such people were assured in various ways by the District Magistrates concerned that their cases were under inquiry and that their applications were with the police for investigation and after receiving the report they would be informed about the acceptance or rejection of their applications. But what came out was this, that even after the lapse of three or four months they did not receive any reply. And when the Government of India issued another notification then the District Magistrates of various Provinces, without informing such persons about the acceptance or rejection of their applications, asked them to go back in view of the said notification. In this way the applications of those persons were rejected, who had come here with one, two or three months permit for the purpose of acquiring permanent citizenship : and instead of granting or rejecting their request, they were asked to go back at once. By doing so, not hundreds but thousands of people were put to difficulties and these people were not given even ten or fifteen days time. The result of this was that many persons in U. P. East Punjab and other Provinces were arrested on the ground that they were going back after the expiry of the fixed period. In fact no action was taken on the applications of those persons who had come here to acquire the right of citizenship and had stayed here for two or three months.

At last Government of India issued another notification. And after that these applicants were referred to this notification and were asked to go back. They requested for ten or fifteen days time, but they were not given even that much time. And any one who over stayed with a view to repeat the request was sent to jail. Some persons are still locked up in jails. In regard to those persons who have come here with permanent permits and registration is required only for the recognition of their citizenship, it seems reasonable to some extent if they are required to make any application only for their registration. But this thing should be clarified here, that they would be required only to apply for registration and thereupon they would be registered as citizens. This Constitution which you are framing here ought to be such that it should not create any difficulty for anybody.

If we do not clarify this point here and now, there may be injustice. Is it fair that after the submission of an application a second enquiry should be made and at the expiry of the enquiry the applicant should be informed as to whether he would be registered or not ? I consider it against justice and I think that it would create good many difficulties for thousands of *bona fide* citizens.

By giving them permanent permits you have allowed them to come and live here. But in this Constitution which you are framing here, you are forcing them to apply for registration. On these applications local officials would make enquiry and after that they would tell them whether they are fit to be registered as citizens or not. Do you, know that thousands of Meos who had

left their houses on account of the disturbances have come back ? If they are treated like that, would it be fair ?

For this reason it ought to be clarified in 5-AA, and the condition for registration should be so fixed that local officials may not have the power to cancel it. After this article has been promulgated and this principle has been accepted a declaration, in most clear terms, should be made, and a notification issued to the effect that no registration would be cancelled. This formality would have to be undergone only for the sake of compliance with the rules. They should get them registered as they have come afterwards, but it, in that, a loop-hole for making an enquiry about them is left, then I am totally against it. Surely, it needs to be amended and revised to afford an opportunity to those people, who were residing here but due to disturbed conditions had gone away and have now returned back not to dispose of their property etc., but to settle down here again. All sorts of facilities in this respect should be given to the poor, to the Meos, and to those, who were residing in different parts of India. These will include not only Muslims, but non-Muslims also---like Christians. If that is not done, then they would have to face many difficulties, they will have to suffer at the hands of local officials. Hence, I want that it should contain these two amendments to the article 5A which should be so amended that the last date fixed by the Government notification, *i.e.*, 19th July, should be changed to September 11, 1948. Though this change makes a difference of only a month or a month and a half yet that would enable thousands of people to acquire the rights of citizenship, which they ought to get.]

My second amendment is:-

Mr. President : *[Maulana Sahib, no such amendment has been tabled.]

Maulana Mohd. Hifzur Rehman : *[That is so. I did not put any such amendment, but I had drawn the attention of some Members of the Drafting Committee. Dr. Ambedkar and Shree Gopalaswami Ayyangar---towards that. As a result, of my talk with them the present amended article regarding the permanent permit holders has been put forth in place of the previous one. I feel that lacuna in it, but now no other course is left open to me except this that I give vent to my feelings here and draw the attention of the Drafting Committee to it. If any legal course is yet left open they they ought to reconsider it.

However, about the other thing I would particularly say this much that if you have included these people in this article then they are citizens of India though they had gone away during the time of disturbances. The local government and local officials after enquiry have accepted these men as Indian citizens according to their rules. Now, these men should not be bound by these conditions, *i.e.*, unless they get themselves registered they cannot become Indian citizens and they would lose their citizenship rights if they fail to get themselves registered within six months. What I want to emphasise is this that there are too many people, who are unaware of all these things. Surely, it is not incumbent upon everyone to be aware of all these things, yet here no opportunity has been given to such people to easily acquire citizenship rights.]

Pandit Thakur Das Bhargava (East Punjab : General) : *[Will Maulana Sahib say in what sense men, to whom permits have been given, are to be regarded as citizens ?]

Maulana Mohd. Hifzur Rehaman : *[Under the prevalent laws.]

Pandit Thakur Das Bhargava : *[No. Never in that.]

Maulana Mohd. Hifzur Rehaman : *[Surely, they have been accepted as such, and the District Magistrates have taken them to be Indian citizens.]

Pandit Thakur Das Bhargava : *[They are not residents.]

Maulana Mohd. Hifzur Rehaman : *[No. They are. I have got legal proofs with me, wherein, it has been stated in writing that they are the citizens of the Indian Union, and that they have been accepted as such in accordance with the Government of India notification. District Magistrate have stated this in writing on the permits.]

Therefore, I want you to see the difficulties which they have to face as Indian citizens. So far the residents of India are concerned, you have not fixed any condition as binding on them. However, if they are likely to migrate from here, there is a separate law for them. Otherwise ways have been provided for the cancellation of their citizenship rights. But local officials should in no case be vested with powers to cancel the citizenship rights of those, Who through these permits have been accepted as citizens of India. I would regard that as against all canons of justice. I want these two rights should be given to these men.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, the question of citizenship has been before the Assembly since 1947. When the question was discussed in that year the tests laid down for the determination of citizenship were criticised by the Fundamental Rights Committee on two grounds, namely that they were either too narrow or too wide. The draft before us is much fuller than that which the Fundamental Rights Committee could lay before us in 1947, yet we find that it has been subjected to criticism on the same old grounds. Dr. Ambedkar very lucidly explained yesterday the provisions of the final Draft laid before us. So far as I can judge from the discussion that has taken place, very little criticism has been urged against article 5. Similarly, with the exception of Prof. K. T. Shah, no speaker, or hardly any speaker has criticised the provisions of article 5B. Criticism has been concentrated on article 5A.

I shall briefly deal with the criticisms urged against articles 5 and 5 B before dealing with the position of those who regard article 5A as making it too easy for people to be regarded as citizens of India. The first thing that I should like to say in this connection is that the Draft only lays down who shall be regarded as citizens of India at the commencement of this Constitution. There is nothing permanent about the qualifications laid down in the articles, 5 to 5 C. Article 6 makes it absolutely clear that notwithstanding the provisions of these articles, Parliament will have power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Any defects that experience may disclose can therefore be easily rectified.

With this preface, I should like to refer very briefly to what was said in criticism of clause (a) of the proposed article 5. One of the speakers, I believe Dr. Deshmukh, said that if the article was retained as it was then the son of a person born while his mother was passing through India would become an Indian citizen. This is a complete misreading of this article. The very first condition laid down in the opening words of this article is that the subsequent provisions apply only to people who have their domicile in the territory of India. Consequently the son born to a traveller from abroad, who is passing through India cannot *ipso facto* become a citizen, cannot by virtue of his birth in India become a citizen of India. Can a man, by reason of his birth here, be supposed to have acquired the domicile of this country?

Dr. P. S. Deshmukh (C.P. & Berar: General) : Nobody said that.

Pandit Hirday Nath Kunzru : Well, one of the speakers said that.

Dr. P. S. Deshmukh : I never said that :

Pandit Hirday Nath Kunzru : Well, if Dr. Deshmukh is clear on that point or has modified his opinion on that point, I gladly concur in the view that he now holds on this point.

Dr. P. S. Deshmukh : I do not think my Friend listened to my speech with any care.

Pandit Hirday Nath Kunzru : I was in the House when the honourable Member spoke, but I may have misunderstood him, I may not have heard him correctly. In any case it seems from what Dr. Deshmukh has stated that there is nobody in this House that has anything to say against article 5.

Now I come to article 5C. Prof. K. T. Shah was probably thinking of the Indians in Malaya when he gave notice of the amendment that if the municipal law of any country did not require that a man should renounce the citizenship of the country to which his ancestors belonged before acquiring the rights of citizenship in that country, there was no reason why our law should prevent him from claiming Indian citizenship. I have taken a great deal of interest in the position of the Indians residing abroad since we got a copy of the Draft Constitution. It has been my endeavour since then to enable Indians living abroad living at least in certain places, to be regarded as Indian citizens without fulfilling difficult conditions. I can say with perfect confidence that article 5 C has been so drafted as to take into account the rights of the people whom probably Prof. K. T. Shah had in mind when he sent in the amendment that I have just referred to. Obviously we cannot allow a man whose ancestors settled down in another country two hundred years ago, to be still regarded as an Indian citizen. There must be some limit to the time during which the descendants of people who were Indians could be regarded as Indians even though they were living outside India. Article 5 C lays down that "any person who, or either of whose parents or any of whose grand parents, was born in India as defined in the Government of India Act, 1935, as originally enacted, and who is ordinarily residing in any territory outside India as so defined, shall be deemed to be a citizen of India" if he has fulfilled certain conditions. Now, the condition laid down is that he should get himself registered as a citizen of India by the diplomatic or Consular representative of India in the country where he is living. It thus seems to me that article 5C takes full account of the just rights of Indians living not merely in Malaya, but also in other countries where some doubt has been cast on the position of Indians who have been

resident there for a long time. If there are among them any persons who still regard themselves as Indian citizens, they will have an opportunity of claiming Indian citizenship under article 5C. If anyone does not take advantage of the provisions of article 5C to get himself registered as an Indian citizen, then that ought to be a proof in the eyes of the authorities of the country where he is living that he is not an Indian citizen but a citizen of the country of his adoption.

I shall now come to article 5A. It is this article that has been occupying the attention of the Members since yesterday. It has been criticised on the ground that its provisions are Undesirably wide and that it throws open the door of citizenship to people who have no moral right to be regarded as Indian citizens. I do not personally agree with the critics of this article. Let us consider calmly what article 5A lays down and the circumstances that require that such an article should form part of our Constitution. Article 5A and article 5AA contain extraordinary provisions arising out of the present extra-ordinary circumstances, arising out of the extraordinary situation created by the partition of India. You will find no counterpart to them in the Constitution of any other country. We have to define clearly the position of those persons who had to leave Pakistan for some reason or other after the partition of India or about that time. There is such a large number of such persons here that their position had to be taken fully into consideration. The representatives of these people have made every effort to get these people recognised as citizens of India from the very start, without being required to fulfil any conditions. The Draft Constitution provided that people coming from outside India should get themselves registered as Indian citizens and that, in order to prove their domicile, they should show that they had been resident in India for a month before their registration. But these conditions were not acceptable to the representatives of the refugees. They wanted that these people should unconditionally be regarded as Indian citizens. Consequently, it has been laid down in article 5C that all those people who migrated to India permanently leaving their homes in Pakistan up to the 19th July 1948 will, without complying with any condition, be citizens of India, if they have been residing here since their migration.

Then, the next category of persons that article 5A takes account of is persons who have migrated to India since the 19th July 1948. Now, if we had listened to those who wanted that all the people, who had come from Pakistan up to the present time or up to the date of the coming into force of this Constitution, should, without any enquiry and without fulfilling any condition, be regarded as citizens of India, I am sure this article would have been subjected to much severer criticism. It would then have been justly pointed out that it provided an opportunity for the acquisition of Indian citizenship by those who had no claim to it.

Sir, it has been said that we should consider whether as desired in an amendment of Pandit Thakur Das Bhargava, that the provisions of this article should not be made more restrictive, so that it may apply only to persons who had left their homes on account of civil disturbances or the fear of such disturbances. It will be very strange if such a condition is laid down. How will it be possible for a person to prove that he left his home on account of the particular cause referred to above? And how would the registering officers be in a position to decide whether the claim was valid or not? There is an even more serious objection to Pandit Thakur Das Bhargava's amendment. He says that the citizenship of India should be open to persons who have not merely migrated to India on account of civil disturbances or fear of such disturbances,

but also to persons who having the domicile of India as defined in the Government of India Act 1935 and being resident in India before the partition, have decided, to reside permanently in India, or have migrated to the territory of India from the territory now included in Pakistan. Now, the first thing that requires attention in connection with his amendment is the words "having the domicile of India." We know that these words have created difficulties. We know what was said in this connection when the articles relating to the establishment of an Election Commission were placed before the House.

Pandit Thakur Das Bhargava : Sir, may I point out in article 5 also the same words occur "having the domicile of India". These are exactly the same words.

Pandit Hirday Nath Kunzru : This is true but as my honourable Friend knows, difficulties have cropped up in this connection. But there are other objections too to his amendment. Take the persons who did not leave Pakistan because of civil disturbances or the fear of such disturbances. Take the people who lived in Sylhet

Pandit Thakur Das Bhargava : Those persons mentioned in (a) are not to be registered as citizens, because they never migrated.

Pandit Hirday Nath Kunzru : "Migrated" means, as I understand it, that they have left their previous homes permanently and have now come to live in India. Suppose people who were living in Sylhet after the Radcliffe Award shifted to Assam or Bengal. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? Again, take the people who, say, entered a province after 1943, say in 1944 or 1945. They have not had the time to get naturalised in this country, and there will be a large number of such people. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? The amendment that he has proposed will raise many difficulties that he has not thought of. It will probably raise difficulties with regard to the position of the people who have migrated from East Bengal to West Bengal. It will be very difficult for these people to prove that they have left their homes in Eastern Pakistan because of civil disturbances or fear of such disturbances. There are millions of non-Muslims still living in Eastern Pakistan. How will these people then be able to prove that there was any justification for their fears that civil disturbances might break out. The House will thus see that Pandit Thakur Das Bhargava's amendment, instead of removing any real difficulty, will create many more difficulties of a more serious character. I do not think, therefore, that it can be accepted.

Sir, there is one other criticism brought against the Draft placed before us that requires consideration. Article 5AA has been criticised by persons holding opposite points of view. There are one or two Members who feel that people who had migrated from India to Pakistan should not be allowed to return to India and claim Indian citizenship except under stringent conditions. There are others who hold a different view and who think that all those persons who left this country after the partition should without any question be allowed to return to their former homes. As regards the people holding the first point of view, I should like to point out that advantage can be taken of article 5AA only by persons who have returned to India under a permit for resettlement or permanent return issued to them under any law. Such permit holders who return to India will be regarded as persons who had migrated to the territory of India after the 19th July 1948. This means that only the permit holders who return to India by the 25th July 1949 will be able to claim citizenship at the

date of the commencement of this Constitution. The permit holders returning to India after the 25th July 1949 will not be able to show that they had been living in this country for six months since their return. Now, the permit holders, that is the people who have returned with a permit allowing them to resettle or reside permanently in India, are entitled to be regarded as citizens of India. They were in India and our Government, taking all things into account, taking into account all the fears expressed by Pandit Thakur Das Bhargava and others of his point of view, have allowed them to come back.

Can we in accordance with any canon of justice refuse to regard them as Indian citizens ? It was open to the Government of India not to allow these people to return and it was also open to the Government of India not to allow them to settle permanently in this country; but permission having been given to them to return and settle down here by our Government, I do not think it will be honourable on our part now to go behind this Permission and say that these people should be treated as strangers now. Beside their number is limited. There need therefore be no fear that their return will be detrimental to our interests. As regards the future, Parliament will by law decide the conditions under which a man can acquire and renounce Indian citizenship. I do not think, therefore, that however apprehensive anybody may be of the possible consequences of article 5AA, it can be regarded as dangerous to the peace and security of India. I think the conditions that I have referred to are of such a character as to take full account of the essential interests of this country.

Sir, the point of view of those who hold a different opinion from that just discussed by me is that people who migrated from India to Pakistan should be allowed to come back unconditionally if after living for sometime in Pakistan, they found that the conditions there would not suit them. I have listened very attentively to the appeal made by these persons, but I do not think that their claim is justified. We all know the circumstances in which certain people, or to be more explicit, a certain number of Muslims, left India and migrated to Pakistan and not all of them left India because of civil a good many left India in order to settle down in Pakistan because they had supported the idea of the establishment of Pakistan when it was put forward and because they thought that they would be able to lead a fuller life in a Muslim country. Can we justifiably be asked to allow these people to come back without complying with any conditions? When they were in India they were against the maintenance of the integrity of India and they left India at the earliest opportunity that they could get in order to live in the country of their choice. They have no moral right in these circumstances to demand that they should be allowed to return unconditionally to this country. There are, however, Muslims, who wanted to live in India even after the partition but they had to leave it under compulsion. Any one that remembers the conditions that prevailed, say, in Delhi, in September 1947 can easily visualize the state of mind of the members of the Muslim Community. If at that time thousands of Muslims left Delhi for Pakistan should we be justified in refusing to them the right of re-entry or the right of citizenship after a careful scrutiny of their antecedents ? I do not think, Sir, that in the case of these people whom we by our conduct drove out of India we can object to their retention of the right of citizenship under the safeguards that I have mentioned. Fairness and morality require that their right to Indian citizenship should be fully recognised and article 5-AA does nothing more than this I hope Sir, that I have shown that the objections urged against article 5-A and 5-AA are founded either on a misapprehension of the provisions contained in them or on an imperfect realization of the consequences that the amendments would lead to. If my argument is sound, it shows that the draft before us has pursued a middle

course; it recognised the just rights of all people without losing sight of the essential condition that only those persons should be regarded as citizens of India who in their heart of hearts owe allegiance to it.

Mr. President : I may inform Members that I propose to close the discussion of these articles at a quarter past twelve, when I would call upon Dr. Ambedkar to reply and then the amendments will be put to vote.

Shri Rohini Kumar Chauduri (Assam : General) : Mr. President, Sir. it is rather unfortunate for me that I should have come to speak at a moment when the debate has been raised to a very high level by my honourable Friends, Shri Brajeshwar Prasad and Pandit Hriday Nath Kunzru. They were speaking in terms of Hindu-Muslim unity. Indo-Pakistan unity and all the rest of it. But, I am here to state some plain facts without any fear, and without any desire for favour. I would ask the honourable Members of this House to judge for themselves after hearing the facts whether we have to support the amendment of Pandit Thakur Das Bhargava or not. The same amendment was also tabled by my honourable Friend Mr. Jhunjhunwala, (he spoke on it yesterday) and was tabled by me who is supposed to represent the Assamese Hindus, by my Honourable Friend Mr. Basu Matari who represents the tribal people in Assam and by my Friend Mr. Laskar, who represents the Bengal Scheduled Castes of Assam. These are the three different groups of persons who have supported Pandit Bhargava. I would, therefore, once more request the House to consider carefully the actual facts, not merely suppositions, not merely theories or, wish as to how certain things ought to be done and to decide for themselves whether to support this amendment or the amendment of Dr. Ambedkar.

By this amendment, I want citizenship rights for those persons--I am particularly concerned with Assam--who had come from East Bengal because they found things impossible for them there. It may be argued in a narrow way that every one who has come from East Bengal was not really actuated by fear or disturbance or actually living in a place where disturbance had taken place. Can any one imagine for a moment that there is no fear of disturbance in the minds of these East Bengal people who had come over to West Bengal or Assam? Was there any sense of security in their minds? Has that sense of security, now after a period of two years, been enhanced by the fact that Pakistan has been converted into a theocratic State? I should say in answer to the criticism of Pandit Kunzru, that you need not insist in such cases that the man should be actuated by fear of disturbance or that disturbance should have taken place. The fear is latent in the mind of everybody. The moment any Hindu or a person of any minority community raises a protest against any action which is taken there, disturbances would immediately follow. Is there any doubt about that?

Therefore, Sir, in answer to Pandit Kunzru's criticism, I would say that this condition of fear, of disturbance should not at all be insisted in the case of a person coming from Pakistan over to West Bengal or Assam or any other place in India.

Secondly.....

Pandit Hriday Nath Kunzru: You can easily have a permit system there and control the influx of outsiders.

Pandit Thakur Das Bhargava: So far, it has not been done.

(Interruption.)

Shri Rohini Kumar Chaudhuri : Secondly, I want citizenship.....

Shri Raj Bahadur (United State of Matsya) : Why not divide East Bengal ?

Shri Rohini Kumar Chaudhuri : I want citizenship rights to this class of people, who have originally belonged to Sylhet in the province of Assam, who, long before the partition, have come to the Assam Valley as a citizen of that province and are staying in the present province of Assam. I ask, have they got citizenship or not ? These people belonged to the, province of Assam, Sylhet. They had come to Assam on some business or other; they had come as government servants or as employees of businessmen. They had not migrated; no question of migration arose at that time.

They had come on business; they are now in Assam; they want to be in Assam. Have they got citizenship rights or not? I want citizenship rights for them.

I want to make it perfectly clear that I want citizenship-rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and- also for those people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here.

At the same time, I also have the temerity, to say in this House that I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them, and forced the benevolent and benign Government to have recourse to the military to keep peace in the province I should be the last person to say, and I hope every one has Honestly acknowledged that, that class of persons should be any mean be granted citizenship rights in the province. I also make it quite plain that I desire to exclude those persons who surreptitiously introduced themselves into my province and who now having mixed themselves with their own brethren, now desire to have citizenship rights, not out of any sense of insecurity on their part, in their own provinces but with a desire to exploit more from that province of Assam. I desire to exclude these people because they had not, long ago set up the struggle for Pakistan, they had not long before taken an active part in compelling the politicians of India to agree for partition; they have their own property and are living peacefully on their own property; not only that, they have brought about such a state of things that they have been able to purchase. property for mere nothing, property which belongs to the minority who had come out of fear.

Shri Mahavir Tyagi (United Provinces : General): What is their number, please?

Shri Rohini Kumar Chandhuri : I do not know. I would ask then honourable Member to listen to me. I am making things quite plain for myself. There need not be any doubt or interruption of my speech.

I want make it quite clear that I do not want citizenship rights to be granted to those people who are not enjoying their own property, but enjoying the property of the minority community who have come away, in some places paying nothing and in other cases paying only a nominal price. I do not want these persons to get citizenship rights at all.

I do not know how you have framed this amendment; how defective is the amendment of Pandit Thakur Das Bhargava or how beautiful is the amendment of Dr. Ambedkar. I do not want to waste the time of the House by an interpretation of that. I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes, of persons whom I want to exclude should not get rights of citizenship. If you adjust them in the light of the facts that I have mentioned, let me see after going through them whether these conditions are satisfied or not. It all depends upon the definition of the word 'migration'. Migration has been defined just now by my Friend who had preceded me. He said, migration means that a person leaves a particular place, having disposed of or having abandoned property which he has and has come and lived in some other place with a view to live there. If that definition is correct, as I am constrained to think that it is correct, if you read Dr. Ambedkar's amendment, you will find exactly that what I want shall not take place And what somebody else wants will take place.

Now if you define the word migration, according to dictionary it means mere moving from one place to the other or in the case of birds it is moving times of season from one place to the other. But to my mind the definition which has been given by Mr. Kunzru is the most reasonable definition. If you act upon that you will find the people from Sylhet when it was in the province of Assam and those who came to Assam either as Government servant or businessmen they had not migrated in the sense the word is understood. Therefore they will not fall under the definition of Dr. Ambedkar. They will be automatically excluded. It is for this reason that Pandit Bhargava has given this amendment that those people who were domiciled in India under the Government of India Act 1935 would automatically be included as citizens if they are prevented from going back now for fear. Those people who went to Assam for service or business long before partition, they cannot be said to have migrated. Now they are unable to go back to their own homes for fear of disturbance. If they remain they will not get the citizenship rights under Dr. Ambedkar's amendments. Even as things stand at present they do not get admission for their children in the colleges as they do not fulfil certain conditions *re* domicile of the Province. In order to be domiciled in a province they have to live there for ten years and have their own house and land. What will be their condition now? If under this definition they would not get citizenship either, what will be their position ?

Unless Dr. Ambedkar assures us on the authority of his knowledge of English words and English legal phraseology that the 'migration' will include also such persons, then I submit that this amendment of Pandit Bhargava will have to be accepted. Many persons belonging to Pakistan are coming who have no insecurity there and who can have their vocation and service. I am stating only facts. What is the position of minorities in East Bengal ? They cannot get any Government Service. No person of minority community holds even a junior post there. Go to Assam and you will find high positions like the Secretary of Finance. Education etc. are held by minorities. Take the case of business organisations and insurance companies in East Bengal. Many insurance companies have closed their branches there and come away to

India, and so where is the vocation for these minorities ? Even doctors have been denied patronage. Even permits by which the majority of business is done are not given to the members of minority community in East Bengal. Then, what is the reason why the people of that majority community in East Bengal who have all these advantages should come to Assam ? The reason is to exploit and get some advantages. Are you going to encourage this ? You will be surprised to learn that the Government of Assam have requested the Government of India to give them the authority to issue permits to restrict such entries, but they have been denied. I stand corrected if my information is wrong. Honourable Friend Pandit Kunzru and other honourable Members of this House must have read in newspapers that in a meeting of the Muslim League at Dacca it was said with some, regret-I hope it was with some real regret that about three lakhs of Muslims had migrated from East Bengal on account of some economic difficulty. Now, you imagine, if three lacs is the figure which is given by the Muslim League in East Bengal, what must have been the real figure of people who have been infiltrating like this. Every province would like to be prosperous but it should not be at the cost of other persons. If you wish to govern a province properly, you should always try to see that the balance of the population is not so much disturbed and you, should see that you do not give citizenship to persons whose presence in that province would be undesirable and prejudicial to the interests of the Dominion of India. That is the test I would apply to these cases. The main condition which ought to be accepted to draw up an article of this kind is absolutely wasted if you are going to give citizenship right to each and everybody irrespective of the fact whether they are likely to be good citizens or not.

Sir, I have said things quite frankly, and I know some honourable Members will be dissatisfied with me. But I have no doubt at all in my mind that the people of all communities in my province, including Muslims who belong to Assam, will absolutely agree with me. Muslims who have made Assam their home will agree with me. But people who have newly come there, expecting to be in a position to create a barrier to the proper and smooth administration of that province, I know, will resent the remarks which I have made. I quite see that I am subjected to a lot of misunderstanding. Some people have interpreted the amendment which I have tabled as an amendment which aims against the entry of Bengalee Hindus into Assam. That is the interpretation which some friends of mine have unfortunately put on the amendment. I may also remind you that in my own province a number of no-confidence resolutions have been passed against me, because as the adviser of the refugees I had advocated the cause of East Bengal Hindu refugees. And it will be of interest to note that most of these people who have no-confidence in me belong to ladies' associations. Of course my honourable Friend Dr. Ambedkar will say that I should not worry, because women will always be woman : and I also console myself with that thought. I have never been a *persona grata* with the women of this country or with the women of any country; and at this age I can very easily endure the ordeal of being not a *persona grata* with the ladies section of the people of this country. But leaving aside the ladies organisations, I only wish that the reasonable men should consider this question in proper perspection. That is my purpose. I will be satisfied if reasonable men support me. If they support Pandit Thakur Das Bhargava, not only will the welfare of my province be safeguarded, not only will the interest of East Bengal refugees be safeguarded but also ultimately it will be to the general welfare of India. You will have a province which will be absolutely loyal, which will be absolutely faithful to the government of the Province and which will be unanimously faithful to the Dominion of India. If you do not accept Pandit Thakur Das Bhargava's amendment, and if you do not bring in any other amendment to the same effect, you will expose your frontier, you

will expose that province and that province will become a source of great danger to you. Already I have been to Cachar and I have seen in that district, from which crossing the Barak river you come into India, there is trouble; and if this amendment of Dr. Ambedkar is accepted, this district of Cachar will be entirely one district of Pakistan, and who will be responsible for giving one district which should have been kept in our province and which was retained after a good deal of fight but which will be sent to Pakistan ? It will be this amendment moved by Dr. Ambedkar.

The Honourable Shri N. Gopalaswami Ayyangar (Madras : General) : Sir, I do not think I would make a speech covering all the draft articles on this question of citizenship. They have been dealt with very fully by various speakers already. I would confine myself, only to two particular questions that have been the subject of much discussion in the course of this debate.

The first thing that I would take up is the question of persons who migrated from India to Pakistan and subsequently changed their mind and applied for coming back to India, to their own old homes and lands, -whether in cases of that description, they should be treated on the same footing as persons who have merely migrated from Pakistan to India. The general class of people who migrated from Pakistan to India, particularly in or about the time of the Partition were people who had their permanent homes originally in Pakistan and were squeezed out of their homes and had to find their permanent homes in India. With reference to that class, the draft article 5A provides that, if their migration from Pakistan to India took place before the 19th July, 1948, provided they had resided continuously from the time at which they migrated to India, in India,, then they will automatically be regarded as citizens of India. In the case of such persons who migrated from Pakistan to India after the enactment of the Ordinance relating to the issue of permits for influx from Pakistan to India, in the case of those persons, we have restricted the acquisition of citizenship only to a small category which would come under the description that they applied for and obtained from the authorities of the Government of India permits enabling them permanently to return to India and resettle there. In the case of these persons, they will not be automatically registered as citizens. They have to make applications to authorities who will be designated for the purpose, and those authorities will take the full history of each of these persons into consideration before they grant a recognition of citizenship.

Shri Mahavir Tyagi: Could you tell us what will be the approximate number of such persons ?

The Honourable Shri N. Gopalaswami Ayyangar: Some time back, the number that was given to me was about 2,000, say, about two months back. It could not now exceed 3,000; that is my present estimate-may be a few persons over this limit or under this limit.

Sardar Hukam Singh (East Punjab: Sikh) : What will be the value of their property ?

The Honourable Shri N. Gopalaswami Ayyangar : I am afraid I am not in a position to estimate the value of the property belonging to these persons. On this question of property, I want to make the position clear. People who migrated from India to Pakistan, even if they remained permanently in Pakistan, retain their title to properties which they have left behind. When subsequently they obtain permits for permanent return and resettlement in

India they come back; and in addition to the ownership title in most cases, if they have been allowed to resettle, they regain possession of those properties. That being so, I do not see how in justice we can refuse recognition of their rights to apply for and obtain citizenship. Citizenship may be refused by the officer who has the right to grant that application on grounds other than these; but so far as property goes I do not see how we can go behind it. But there is of course the legal point which my honourable Friend Shri Alladi Krishnaswamy Iyer made that there is really no necessary connection between citizenship and property. It will be for us to decide what we shall do with the property,--whether having lost possession of their property we should allow them to get back to their property. As a matter of fact the grant of these permits for permanent return and resettlement implies their being allowed to resettle on their property. But there have been cases where this has not been found possible and some people who have returned on these permits have been settled on other property. That is a matter of detail which we can settle independently of the question of citizenship. Now so far as this matter is concerned it is a matter of the solemn word of the Government of India, as more than one speaker has pointed out. Having allowed these people to return on the authority of inquiries made by our own officers and documents issued by authorities who were specially empowered for this purpose it would not be in keeping with honesty on the part of any Government to say, "We shall not give the recognition that is due to persons who possess these documents."

I do not wish to go further into this matter, but there were one or two points which were raised by one speaker. The first point was that people who come back on permits of this description should automatically get back their citizenship and should not be compelled to apply to an officer and await a grant by him of 'the right of citizenship to them. The point for us to consider is whether in the case of these people it is at all wise or necessary for us to put them on a higher level than people who owned property in Pakistan and have had to give up that property and come here after the 19th July 1948. Though their intention for permanently settling in this country is clear they have to apply to an officer for the purpose of obtaining rights of citizenship. I do not think that people who deliberately migrated from India to Pakistan should be put on a higher level than those people who were squeezed out of Pakistan out of their properties and had to come here after the 19th July. That is one point which I would like the House to consider. They say that there were cases of a considerable number of people who, on account of statements made by certain persons or supposed notifications issued by people under some authority or other, have returned to this country without obtaining permits and they should not be prejudiced by the fact that they had not obtained these permits. I think, Sir, that so far as people who migrated to Pakistan from India are concerned, there is this definite fact that their first act was one of giving up their allegiance to India and owing their allegiance to a different State. Before we take them back into India and give them rights of citizenship we must have some definite method by which their intention to return to India is unequivocally expressed. Also we must have definite evidence of the fact that they come back to this country which the *imprimatur* of the Government of this country. And that is why in this article 5AA we have restricted this eligibility for citizenship to persons who have come back to India on permits issued under the authority of a law issued by us and by our own officers.

If we travel out of this category of persons--we shall have to consider the cases of a large number of persons whose title to anything like citizenship in this country is of the flimsiest possible description. It is possible that some people who have come back to India have made India again their permanent home and want to be citizens of India and do not want to go back to Pakistan.

Their cases must be left to be decided by laws which will be made by Parliament hereafter. Their cases are not so clear that we must include them in the Constitution itself. Therefore it is that I would earnestly beg the House to accept the position that we have translated into words in this article 5AA. It States the general proposition that a person who has migrated from India to Pakistan shall not be deemed to be a citizen of India. It has one proviso which gives the right to such a person to claim to be a citizen again of India if he applies for and obtains a permit from our own authorities which permits him to come and resettle in India permanently in his own home and on his own lands.

The other point I wish to refer to is one which has been raised by my honourable Friends from Assam. I must say that I have not been able clearly to follow the particular position that they take in regard to the matter which worries them. It is no doubt a fact that a substantial number of Muslims do go from East Bengal to Assam. But this kind of migration-from what little study I have made of things happening between East Bengal and Assam in the past-is nothing new. The numbers vary a bit perhaps; but the question that is put to us is that under this particular provision in the draft we shall open the door for a very large number of Muslims who will come over to India from Pakistan and who will apply for registration and get registered, much to the detriment of the economy of Assam. Now, let us analyse the position. It is said, for instance, that Assam wanted a permit system to be applied as between East Bengal and Assam. The Assam Government and the Government of India have discussed the matter between themselves. They have held more than one conference for the purpose of arriving at a solution of this trouble. And I shall not be revealing a secret if I say that at the last conference we had on this, subject, the general consensus of opinion amongst both representatives of the Government of India and the representatives of Assam was that it was not wise to introduce anything like a permit system between East Bengal and Assam on the same lines as obtain between West Pakistan and India. There are complications which perhaps it is unnecessary for me to go into in detail. One very big complication is the repercussion it will have as regards the movement of persons between East and West Bengal. Now, by permitting the extension of the Permit system as it works between West Pakistan and India to the area between East Bengal and Assam, we shall be inviting Pakistan to introduce such a system as between East and West Bengal and I only mention this to people who are acquainted with both West Bengal and Assam for them to realize all the enormous complications, on the economy of West Bengal which it will entail. The last conference merely came to the conclusion that we should seek and apply other methods for preventing or mitigating the influx of a large number of Muslims from East Bengal to Assam, and this matter is being investigated and, for my own part, I think it will be possible to devise some kind of legislation which will enable Assam to stem the tide very substantially. I would not like that we should adopt any methods which would complicate the situation in the eastern borders of the country. I could realize what, for the time being, it does mean to Assam--a number of Muslims coming in who are not wanted there--but we should not altogether ignore the possibility that conditions being what they are in Assam, this kind of thing might be applied by over-zealous officials of the Assam Government so as to be prejudicial to, say, the Bengalis who have migrated from East Bengal to Assam and perhaps even from West Bengal to Assam. We have got to take into consideration all these things. Now, I would earnestly request the House that we should not complicate the solution of this problem of citizenship by bringing in this particular trouble between East Bengal and Assam for which we are devising other measures of solution.

Sardar Hukam Singh (East Punjab: Sikh) : Sir, we have been told that the Muslims, who left their property here and have come back, retain their titles to the property that was left here, and when they come back, it is simple justice to return them that property. Government cannot do anything else. Ibis is very good. I want to know from the honourable Mover whether according to his logic, we, who have come from Pakistan and left our properties there, also retain our titles to those properties. Can he suggest us some court or tribunal before whom we can go and place those title deeds to get justice that is being accorded to these people here by this proviso?

The Honourable Shri N. Gopalaswami Ayyangar : Sir, there is a slight inaccuracy in the honourable Member's statement of the position I took in, regard lo properties left behind in India by the Muslims who have migrated to Pakistan and returned permanently to reside in our own country. My position was that the migration itself did not extinguish their title to property in India. That title continues until a final settlement takes place between the two governments for the extinguishment of titles in both countries. Till then, the title of each person continues with him. The property might have vested in the Custodian, he may be managing it, he may be recovering rents from it, but when a particular person comes back and is allowed to resettle on his own land, the thing that ought to occur and for which, I believe, provision exists in our evacuee property law, is that when he gets the right to resume possession of his land and satisfies every authority here concerned that he has come back for permanently settling in this country, then what was treated as evacuee property could be restored to him. Similar law exists on the other side also. People who have left Pakistan and come to India retain their titles, but if they go back on anything like a permit, of the description that I have given, issued by the Pakistan Government, they will be entitled to the same kind of treatment as we contemplate in the case of Muslims who have returned to India.

Now, I do not want the House to go further and ask me whether this thing actually takes place. I am talking of the law on the subject. There is nothing which prevents us from going back and claiming the land or the property, whatever it may be. As a matter of fact, while we have had about three thousand Persons who have obtained these permits and probably a very much larger number who have applied for them and not got them yet, I am afraid we shall be able to count non-Muslims who have come over from Pakistan to India and wishing to go back to Pakistan on our fingers' ends. There is no doubt of the fact that there is no desire, anything like a substantial desire, on the part of our own people who have come over as refugees to go back and resume possession of their lands, while it is a fact that a considerable number of Muslims who have gone over to the other side want to come back.

Dr. P. S. Deshmukh: What is the explanation ?

Shri Mahavir Tyagi: We are prepared to go back in case the Military also accompanies us.

The Honourable Shri N. Gopalaswami Ayyangar: Yes, that is true, but you have got to recognise the fact that the Muslims are coming back here without insisting upon the military.

Shri Bikramlal Sondhi (East Punjab : General) : Because it is one-way traffic.

The Honourable Shri N. Gopalaswami Ayyangar: Well, the legal position is, I do not think, different in the two countries.

As for the other question which the honourable Member asked me as to which tribunal we can go to for the purpose of having this right to go back and resume possession of our properties on other side enforced, my only answer is that the legal jurisdiction are different. There is no Court of law to which you can go on this question. The only thing you can do is to worry our own Government to see that similar rights are conceded to our people on the other side, and that, as you know, is being done incessantly, constantly by this Government.

Shri Algu Rai Shastri (United Provinces : General) *[I beg to submit Sir, that the articles relating to citizenship which are under consideration at present are very important, ones, and the nature of discussion so far held indicates that they require some further discussion. If we adopt them in a hurry, we may perhaps have to repent for it later on. Before we take any decision regarding these articles, we shall have to decide many important questions relating to them. In my opinion it would be better, Sir, that we consider them again in the next sitting of the Assembly. I beg to submit that if we adopt these articles in a hurry, it would be a grave injustice to such Members as want to express their opinion on it and have not so far got any opportunity to do so. It is necessary to consider the several other questions that are connected with this matter. I would, therefore, request that these important articles relating to citizenship should not be rushed through.]

Mr. President : *[We have already devoted more than nine hours to a discussion of this question.]

Dr. P. S. Deshmukh : May I ask a question? The real question which my Friend intended to ask was, to what extent there is reciprocity so far as admission of non-Muslims in the Pakistan areas was concerned, and I do not think any satisfactory answer was given to that question. What we want to know is to what extent has the Honourable Minister found the Pakistan Government reciprocating to the ideas and ideals that we hold, and propagate and the policies that we adopt ?

The Honourable Shri N. Gopalaswami Ayyangar : I must confess in practice the response has not been as satisfactory as I should wish.

Shri Mahavir Tyagi: Let us not discuss the failure of our Government. Let us look into the Constitution.

The Honourable Shri N. Gopalaswami Ayyangar : That is true. The question is that two Governments meet together for settling a proposition. If there is no agreement there is a failure. But whether the failure, attaches to one side or to both sides is a question.

Shri Phool Singh (United Provinces : General) : *[Mr. President, what is your decision about concluding the discussion on these articles today?]

Mr. President : *[I am just putting the question.] I had thought that we had discussed these articles sufficiently during the nine hours that we had spent on them, and I would personally like to put the matter now to vote. As a

desire has been expressed by some Members that they would like to speak and further discuss it, I would put it to the House.

The question is:

"That the question be now put."

The Assembly divided by show of hands.

Ayes-59

Noes-35

The motion was adopted.

Shri Algu Rai Shastri : Sir, although the number of votes for closure is greater, considering also the big number who want the discussion to go on, I crave your indulgence to allow more discussion on this point.

Mr. President : I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members; they are free to vote in favour of any amendment they like.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern that law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K.T. Shah that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam particularly as voiced by my friend Mr. Rohini kumar chaudhuri. If I understood him correctly his contention was that these articles relating to immigrants from Pakistan to India have left the gates open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal proportions in that province. I think, Sir he has entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been

declared, automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who, have entered Assam, whether they are Hindu Bengalees or whether they are Muslims, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by, an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a *bona fide* motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me that having regard to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini kumar chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948- in this case on a showing that the man has resided in India, citizenship becomes automatic-no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan. I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re- state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition, which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. the origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India, notwithstanding that they went to Pakistan, might, on the basis of the rule of International Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March-you all know that we have taken 1st march very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of international justice if we presumed that any man who, as a

result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to Article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my honourable Friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of a temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt, and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgment look very invidious, it would in my judgment look a breach of faith if we now said that we should not allow these people whom our own Government whether rightly or wrongly, allowed to come away from Pakistan for the purpose of permanent residents here, to have this privilege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

Mr. President : Now I will have to put the various amendments to the vote. It is somewhat difficult to decide the order in which these amendments should be taken up.

The Honourable Dr. B. R. Ambedkar : Let all of them be withdrawn.

Mr. President : I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable

Member wishes to withdraw any amendment, he may express his desire to that effect. I will first take up the amendments moved by Dr. Deshmukh.

The question is :

"That in amendment No. I above, for the proposed article 5, the following be substituted :-

'5 (i) Every person residing in India—

(a) who is born of Indian parents; or

(b) who is naturalized under the law of naturalization; and

(ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India'."

The amendment was negatived.

Dr. P.S. Deshmukh : I beg leave to withdraw amendments nos. 29, 116, 118 and 119.

Amendments Nos. 29, 116, 118 and 119 were, by leave of the Assembly, withdrawn.

Mr. President : Then I will take up Amendment No. 120.

Shri T. T. Krishnamachari (Madras : General) : If amendment No. 130 is accepted this does not arise.

Mr. President : No. 120 goes out. Then the amendments moved by Mr. Naziruddin Ahmad. They are all of a verbal nature. No. 4.

Mr. Naziruddin Ahmad (West Bengal: Muslim): No reply has been given to this, but I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then amendment No. 18. These are all of a verbal nature and they might be left to the Drafting Committee for its consideration.

Mr. Naziruddin Ahmad: All my amendments may be considered by the Drafting Committee.

Mr. President : Mr. Naziruddin Ahmad leaves all his amendments to the Drafting Committee to consider. So, they are not to be put to the vote. Does the House permit him to withdraw his amendments in that sense ?

All the amendments of Mr. Naziruddin Ahmad were, by leave of the Assembly, withdrawn.

Mr. President : Then we come to the amendments moved by Mr. Jaspat Roy Kapoor. Amendment No. 5.

Shri Jaspat Roy Kapoor (United Provinces: General) : I want to spare my amendments the fate of being defeated. Therefore I would like to withdraw them.

All the amendments of Mr. Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No. 203 by Professor Shah.

The question is:

"That in clause (a) of article 5 after the words 'grand-parents' the words 'on the paternal-side' be added".

The amendment was negatived.

Mr. President : The question is:

"That in clause (b) of article 5, after the words 'grand-parents' the words 'on the paternal-side' be added".

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 above, in the proposed article 5—

(i) after the figure "5" the brackets and figure "(1)" be inserted;

(ii) before the Explanation, the following proviso be added:—

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country'.;

(iii) after the Explanation, the following new clause be added:—

'(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India'."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added:-

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship'."

The amendment was negatived.

Mr. President : Then we come to amendment No. 20 by Prof. K. T. Shah. I think this is more or less of a drafting nature. Could it be left to the Drafting Committee ?

An Honourable Member : Yes.

Mr. President : I had better leave it to the Drafting Committee to consider this amendment.

Amendment No. 152. The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (i) of clause (b) of the proposed new article 5-A. But before the word "and", the following proviso be added:-

"provided that any person who has so migrated to the areas now included in Pakistan, but has returned from the area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 above, at the end of clause (c) of the proposed article 5, the words 'and subject to the jurisdiction thereof' be inserted".

The amendment was negatived.

Mr. President : Then there is amendment No. 12 by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General) : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in amendment No. 1 of List 1 (Third Week) of Amendments to Amendments, in clause (C) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if, the following words be substituted :-

'Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances--

(a) having the domicile of India, as defined in the Government of India Act, 1935, and being resident in India before the partition, has decided to reside permanently in India; or

(b) has migrated to the territory of India from the territory now included in Pakistan; shall be deemed to be a citizen of India at the date of the commencement of this Constitution if' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of the proposed new article 5-A, the following words be added :-

"Or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent resident in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments in the proposed proviso to the proposed new article 5-AA—

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) the words 'or permanent return' be deleted; and

(iii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July, 1948' the following words be substituted :-

'shall be entitled to count his period of residence after the nineteenth day of July, 1948, in the territory of India in the

period required for qualification for naturalization or acquisition of citizenship under any law made by Parliament.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No.131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA-

(i) the words 'nothing in this article shall apply to' be deleted:

(ii) for the words beginning with 'and very such person shall' and ending 'nineteenth day, of july, 1948' the following words be substituted :-

'shall be eligible for citizenship by naturalisation if Tie fulfils the condition , laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalisation the certificate of naturalisation can be cancelled.' "

The amendment was negatived

Mr. President : The question is:

"That in amendment No.1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, after the words 'any person' the words 'having his domicile in the territory of India' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, for the words 'whether before or after' the word 'before' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, for the words 'or the Government of India' occurring at the end of the article be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 above, at the end of the proposed new article 5-B, the following proviso be added:-

` Provided he has not abandoned his domicile by migrating to Pakistan after 1-4-1947 or acquired after leaving India the citizenship of any other State.' "

The amendment was negatived.

Mr. President : The question is:

"That in Amendment No. 1 above, in the proposed new article 5-A, the words 'deemed to be' deleted."

The amendment was negatived.

Mr. President : Then there is amendment No. 123.

Shri B. P. Jhunjhunwala (Bihar: General): Sir, I beg leave to withdraw my amendment.

Mr. President : Amendment No. 150 also is in your name.

Shri B. P. Jhunjhunwala: I withdraw that also.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President : Then we come to amendment No. 21 by Shri S. Nagappa.

Shri S. Nagappa (Madras: General): Dr. Ambedkar has expressed his willingness to accept this amendment, Sir.

The Honourable Dr. B. R. Ambedkar: We shall consider it when we go over the whole thing is the language is appropriate.

Mr. President : It is a question of drafting more than anything else. So then it is left to the Drafting Committee.

The question is :

"That is amendment No. 131 of List IV (Third Week) of Amendments to Amendments the proposed proviso to the proposed new article 5-AA be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, In sub-clause (ii) of clause (b) of the proposed new article 5-A, after the word 'before' the words 'or after' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments for the proposed new article 5-C the following be substituted:-

"Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualification for citizenship mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after commencement of this Constitution."

The amendment was negatived.

Mr. President : I think this disposes of all the amendments. I shall now put the original proposition as moved by Dr. Ambedkar. Is it necessary to read it ?

Several Honourable Members: No. Not necessary.

Shri Jaspal Roy Kapoor: Mr. President, may I submit, Sir, that there are other amendments standing in the name of Dr. Ambedkar and Mr. T. T. Krishnamachari, and they might also be taken up as amendments.

Mr. President : I am putting the consolidated proposition incorporating all the amendments.

Shri Jaspal Roy Kapoor : With regard to that, I have to make one submission. With regard to amendment No. 132 moved by Mr. T. T. Krishnamachari, I would request Mr. Krishnamachari to consider the advisability of withdrawing it here and referring it to the Drafting Committee. It may be dropped here and referred to the Drafting Committee which might consider the advisability or otherwise of allowing these words to be omitted.

Mr. President : If it is only a question of drafting, the Drafting committee has always the power. If it is a substantial matter, it cannot be left the Drafting Committee.

Shri Jaspal Roy Kapoor : If amendment No. 132 is accepted here, we shall be tying down the hands of the Drafting Committee. I understand Mr. T. T. Krishnamachari himself has some doubts about the advisability or otherwise of retaining these words.

Mr. President : Mr. T.T. Krishnamachari will say whether he has any doubt about the wisdom of the amendment.

Shri T. T. Krishnamachari: I may explain, Sir, that my amendment was necessitated by the amendment to the wording of article 6. If necessary this matter will no doubt be examined further. I simply said I shall put Mr. Jaspal Roy Kapoor's views before the Drafting Committee. That does not mean that I have any doubts in the matter. We have provided for this contingency in article 6. Speaking for myself I am examine practically every word of the entire set of articles 5, 5-A, 5-AA, 5-B, 5-C and 6 independently.

Mr. President : I now put the consolidated amendment as moved by Dr. Ambedkar, articles 5 and 6 which includes article 5-A, 5-AA, 5-B, and 5-C.

The question is :

"That for articles 5 and 6, the following articles be substituted:-

Citizens at the date
of commencement of this
Constitution.

5. At the date of commencement of this
Constitution, every person who has his
domicile in the territory of India and-

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

Rights of citizenship a
certain person who have
migrated to India from
Pakistan.

5-A.. Notwithstanding anything contained in article
5 of this Constitution a person who has migrated to
the territory of India from the territory now
included in Pakistan shall be deemed to be a citizen
of India at the date of commencement of this
constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has ordinarily resided within the territory of India since the date of his migration, and

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

Rights of citizenship
of certain migrants
to in Pakistan.

5-A.A. Notwithstanding anything contained in
articles 5 and 5-A of this Constitution a person who
has after the first day of March 1947, migrated
from the territory of India to the territory now
included in Pakistan shall not be deemed to be a
citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clauses (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Rights of citizenship of certain persons of Indian origin residing outside India.

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic consular representative, whether before or after the commencement of this constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

Continuance of the rights of citizenship.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament continue to be such citizen.

Parliament to regulate the right of citizenship by law.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The amendment was adopted.

Mr. President : The question is :

"That articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, stand part of the Constitution."

The motion was adopted.

Articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, were added to the Constitution.

Mr. President : We are now adjourning till Thursday next. Under the rules, the consent of the House has to be given if there is to be an adjournment for more than three days. As this happens to be an adjournment for five days, I take it that the House gives the leave.

Honourable Members : Yes.

Mr. President : We adjourn now till nine of the Clock on Thursday next.

Shri Syamanandan Sahaya (Bihar: General) : May I suggest, Sir, that on the 18th we may assemble in the afternoon, in view of the fact that some trains come late ?

Mr. President : I have personally no objection if the Members so wish. Is that the general wish of the House ?

Honourable Members: Yes.

Mr. President : We adjourn to Three P.M. on Thursday next.

The Assembly then adjourned till Three of the Clock in the afternoon on Thursday, the 18th August, 1949.

[Translation of Hindustani speech.]